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S W I T Z E R L A N D

by

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T A B L E O F C O N T E N T S

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P R E F A C E.

The following pages have been selected from a larger essay which the writer has been preparing upon the general subject of Government in Switzerland, Federal, State, and Local. Consequently certain institutions, the operations of which are divided between two or more of these elements of the state, do not receive as full treatment in this part as they do eventually in the course of the larger work, and the impression of the condition of society is not complete. Yet it is hoped that the distinctive functions of the Federal Government have been clearly set forth and its relations to the two and twenty states in its charge sufficiently explained.

In the place of a longer historical introduction there has been inserted a paper which the author read before the American Historical Association, entitled "A Study in Swiss History". In this are described certain characteristic political ideas which have dominated the history of that country from the beginning, and which, now found in the institutions of the state, cannot be explained without a study of its annals.

The investigation of Swiss social and political institutions is eminently a study of survivals. That country has suffered very little in the way of artificial or theoretical forms of

government, and though many of its social features have been changed almost beyond recognition yet the line of evolution can be distinctly traced and the fact made clear that its society has been built upon an historical basis.

The introductory sketch points out reasons why the Cantons were not sooner formed into a compact Confederation, yet, in doing so, the steps are indicated by which they did gradually come into that relationship and advanced from a Staatenbund into a Bundesstaat.

I N T R O D U C T I O N

A STUDY IN SWISS HISTORY.

Following up that sentimental interest which all Americans naturally feel in a sister republic, the writer was led, some years ago, while at a foreign university, to begin more extended studies of the history of Switzerland, with eventual publication in view. It is no longer necessary to rise to the "Defence of the Constitution," and exhibit to timorous countrymen the workings of successful republicanism, as did President John Adams so admirably, when our constitution was new ; but it appeared to the author that the histories of Switzerland, written by foreigners, were for the most part undertaken by persons educated in a different school of political ideas, and hence unable to fully appreciate the aspirations of the Swiss people.

It seemed, therefore, worth while to attempt a history of the republic, which, other things being equal, might combine the advantages of being written from a republican standpoint, as well as by a disinterested spectator.

Brief residences in Switzerland confirmed the idea, and studies in this direction have since had at least a share of attention.

Meanwhile, at the suggestion and under the encouragement of Prof. Herbert B. Adams, a study of the present institutions of the country was also begun, with the view of comparing them with our own, under some such title as "Civil Government in Switzerland compared with that in the United States." It was hoped that an excuse for a small work of this description might be found in its usefulness to students of institutions.

Unique facilities for this work, considering the wide sep-

aration of the countries, are afforded by the library of the Johns Hopkins University, which, fortunately, possesses the books and many of the papers of the late Prof. Bluntschli, of international fame, who was not only a native of Switzerland, but an historian of its laws and institutions. To this the Swiss Government has of late generously added a large collection of documents, historical, administrative, and statistical, relating to Federal affairs since 1848.

With these materials it is possible at least to appreciate the work of native specialists.

The object of this paper is to present a brief historical explanation of one or two characteristic Swiss political ideas, yet to be found in their constitutional laws.

Many familiar facts in Swiss history will be repeated without further apology, for the purpose of showing their bearing upon these topics, and occasional references will be made to the experiences through which the United States have passed during the solution of similar problems.

The present Swiss Confederation is composed of twenty-two states, which call themselves "sovereign cantons." The Federal constitution enumerates its members by the same title; each of the state constitutions says, in effect: "This, under Federal supremacy, is a sovereign state," and each declares that the sovereignty within the state rests in the people as a whole.¹

This careful definition of the nature of the state, this striking emphasis upon isolation and individuality, is not a modern product of the study of the rights of man, but a phenomenon whose roots run deep into the history of Switzerland, and the nature of the Swiss man. Let us notice briefly the sources of what may be called this centrifugal force, and some reasons for its continuity.

Although Switzerland now employs three official languages, and at least four distinct tongues are spoken in various parts, it need hardly be said that the history of its government is a history of Teutonic institutions. German communities made the first confederation; Germans were

¹ Sammlung der Bundes- und Kantonsverfassungen, 1880.

the material with which it was for centuries almost exclusively increased. All other nationalities now included were, until ninety years ago, simply allies of the League, or still lower, subjects of the same. Hence the sources of governmental ideas, the political instincts of the race, are to be sought, not in many directions, but chiefly in that branch of the German stock which, at the opening of the fifth century, took possession of the country, never to be dislodged. As the Burgundians became Frenchmen in language and sympathies, we must turn to the Alamanni, and we find in that people certain traits conspicuously emphasized.

Ammianus Marcellinus, writing in the second half of the fourth century, states that the Alamanni were ruled by fourteen different kings, fully independent of each other, and connected by no common government. Occasionally, however, and for warlike purposes, they joined together under one of these kings, among whom there appear to have been different degrees of power or influence. At the end of the war, and an instance is given where even at the close of a battle, the authority of this general chieftain, like that of the English Bretwalda, expired, and the frail confederation fell asunder with the accomplishment of its end.

Nor should we infer that these kings were despots, for Ammianus relates that at the battle of Strassburg, about 378, the common soldiery demanded that the leaders dismount so they should not escape by flight in case of disaster. Chlodomar, who was for the time commander-in-chief, leaped from his horse and the others followed.¹

Such were the Alamanni before the Great Migration. Characteristic, also, was the conquest and settlement of Helvetia. A portion of these kings came with their followers over the Rhine into the northern part of the province, and each tribe apparently selected a place for itself.

But not only was there a separation of the clans, but there would seem to have been a general segregation of individuals. With true German instinct, the Alamanni avoided, if they did not destroy, the Roman cities with their contracted

¹ Wietersheim: "Gesch. der Völkerwanderung," III., 379 f.

and hateful walls. They betook themselves with flocks and herds into the open country, and settled in small numbers in manors, hamlets, or villages.

Manors, or Höfe, were property of leading free men, who, selecting suitable localities, quartered about themselves only their slaves and tenants. These wrought out for them a hard, half-civilized, but independent existence. Here again the instinct of isolation exhibited its power. It has been estimated from studies of the names of places that in Canton Zürich alone over three thousand manors were settled in early times, against only about one hundred hamlets and some twenty villages.¹

I pass over the intervening history to the formation of the first Confederation. During the eight hundred years which have elapsed, the valleys of Schwyz, Uri, and Unterwalden have crystallized into feudal dependences with different conditions of personal freedom among the inhabitants and with different external allegiances.

Fragments only of the ancient unqualified freedom remained. Power to make law there was little beyond what concerned their common pastures.² Popular rights found expression in the application of law, in attendance at court, and in sitting upon juries in local trials. But though they might not elect their own judges, upon one thing they were agreed: they would endure no judge or governor who would not respect their local customs and traditional usages. In defence of this principle the three valleys, in extent less than forty miles square, and thinly inhabited, defied the armies of Austria. Their external overlordships were distinctly acknowledged, but, say the Articles of Confederation, "We have also, in general assembly and with unanimous consent, agreed, determined, and ordained that in the aforesaid valleys we will in no wise accept any judge who shall have bought this office for money or for any price whatever, nor one who is not a resident or fellow-countryman."³ They further agreed to settle difficulties between

¹ Meyer: "Die Ortsnamen des Kantons Zürich."

² Dierauer: "Geschichte," I., 84.

³ "Amtliche Sammlung der Eidgenössischen Abschiede," I., p. 241.



the cantons by arbitration, and if one repudiated the sentence of the referees the other states should compel obedience. There was to be also a common outlawry of criminals which should include all three valleys, but no common tribunal.

After 1309 the three cantons stand on the same level of imperial freedom. The charters of Henry VII. guarantee that "in no matter, or case at law, shall you be cited before the court of a temporal judge, with exception of the court of our majesty, outside the limits of the aforesaid valleys." This was the coveted *Jus non evocando*.¹

With this privilege the measure of local freedom was full. The valleys of the League knew henceforth no master but a distant and preoccupied empire.

One by one other cantons were added to the Confederation. In 1332, Luzern—but in the language of the agreement, they said: "We reserve to our city and the council all their jurisdictions, and their customs in respect to citizens as well as strangers, as they have been handed down from ancient times." Likewise Uri, Schwyz, and Unterwalden: "We reserve also for ourselves, each forest canton in particular, within its landmark and borders, its jurisdictions and good customs, as handed down from ancient times."²

Twenty years later Zürich became a member, with the additional provision that in case the Burgomaster or Council of the city was threatened, the forest states should assist them to maintain their offices. But this was to occur when requested under the seal of either the Burgomaster or the Council, and furthermore, "let it be known especially that we have expressly established and required, in respect to all who are in this League, that every city, every land, every village, every manor, which belongs to any one who is in this League, shall continue undiminished in their jurisdictions, in their privileges, in their charters of freedom, in their laws, and in their good customs as they have hitherto conducted and brought them down, that no one shall injure or hinder another therein."³

¹ Kopp: "Urkunden," 103.

² "Eidg. Abschiede," I., p. 256.

³ "Eidg. Abschiede," I., 260.



Within the next three years Glarus, Zug, and Bern were admitted to the Confederation under similar conditions, and, as thus constituted, the League of Eight closed its doors for a century and a quarter.¹

It was an alliance of states for the purpose of warding off danger from without and maintaining peace and friendship within. What were the events which clustered about this League and the constitutional traditions which passed on with it to following generations of Swiss people?

In 1386 and 1388 the famous battles of Sempach and Näfels decided, although they did not bring to an end, the hundred years' struggle for independence. But at the same time the states which thus covered themselves with glory were united by an alliance in which only three were directly connected with all the others.²

It was after the manner of telephone service in which the three original cantons acted as the central exchange. When the later states wished the help of the League they called on the forest cantons, and the latter summoned the rest. There were some cross-connections, but in general the touch was indirect. So loose was the tie, that in this same battle of Sempach Bern refused to co-operate, though she repented later.

Power to compel obedience to the Confederation in external matters was authorized but invalid.

Fifty years later civil war broke out, and in 1450 was brought to a close in such a way that the question of a state's right to form foreign alliances found a solution. The balance of the League conquered Zürich and Austria combined. The Confederation was much strengthened externally thereby, but the occasion left no mark upon the constitution. Two great mutual agreements were enacted in the fourteenth century. In 1370 the so-called *Pfaffenbrief* declares that the confederates will endure no spiritual courts except in spiritual matters or marriage, and private feud is prohibited without permission of authorities. But the ex-

¹ "Eidg. Abschiede," I., pp. 273, 275, 285.

² Note the provisions for military assistance in charters cited.

ecution of this law is left to the place where the culprit resides.¹

In 1393 the *Sempacherbrief*, a general military ordinance was adopted, in which they endeavored to maintain better discipline in battle, regulate plundering, and in some measure temper the savagery of war,—in reality a remarkable monument in military history,—but that same document commands that cowards, deserters, or other breakers of its provisions, shall be tried by their own land or city, and if “one be found guilty before them to whom he belongs, and whose duty it is to judge, he shall forfeit his life and goods to them to whom he belongs and to *no one else*.”² In other words, federal law, but state trial and execution, even in national treason.

Between 1474 and 1477 the Swiss destroyed the most ambitious monarch of Europe, Charles the Bold; won the world-famous battles of Grandson, Murten, and Nancy; and annihilated the flower of chivalry; yet the general constitution of the country was the same disjointed artifice which had been framed for the League of Eight one hundred and thirty years before, strengthened only by usage and common recollections.

Soon after this the states were increased to ten, in an agreement in which all are parties, but the relations of the original eight are unchanged.³ This Confederation put down the Suabian League, practically severed Switzerland from the empire, and, in fact, for fifty years after the Burgundian war held the balance of power in Europe.

Three more cantons were taken in, Basel, Schaffhausen, and Appenzell. These were required to give aid when the Confederation carried on war against a common enemy, but in case of strife among the other cantons there was the remarkable provision that these three states should try to settle matters peaceably, and in case they failed and it came to war, they should *sit still*, let the others fight it out, and aid no party.⁴

¹ “Eidg. Abschiede,” p. 301.

² “Eidg. Abschiede,” I., 327.

³ Freiburg and Solothurn, 1481. “Eidg. Abschiede,” III., pt. I., p. 698.

⁴ “Eidg. Abschiede,” III., 2, pp. 1291, 1297, 1361.

This Confederation of thirteen states endured without change of actual members two hundred and eighty-five years.

National affairs were discussed in general diets, as, in fact, they had been from the beginning, but they were diets which lacked the very essentials of republican government—majority rule and power of execution.

Each canton sent two delegates but possessed only one vote. Resolutions passed, not by the consent of the majority of the states, nor even on the vote of nine states, as in our old Confederation, but only by unanimous agreement. Not only this, but delegates were expected to have the special instructions of the home government before the final vote. If these were not given in advance it was usual to defer consideration to an adjourned meeting, in order to allow consultation.¹ Having enacted a law, there was no power to enforce obedience. One state could, in the first place, block the most ardent desires of the whole Confederation, and even when unanimous consent was given, it often happened that one or more cantons failed to obey. Certain laws, for instance those against private foreign pensions and enlistment, though desired by all the governments, found no general obedience. In fact, it came finally to pass that the diets could make few unanimous resolutions other than in regard to the management of their common property.²

The Confederation grew weaker as it grew older. The states did as they pleased, and the national spirit decayed, but it was not altogether the natural outcome of cantonal sovereignty. Let us note a few things which caused this principle to be exaggerated, and then, as it were, petrified in national politics.

In a paper read before this Association last year upon the "State-Rights Theory in American Politics," it was stated that at a certain period of our history the question of

¹ Bluntschli : "Gesch. d. Eidg. Bundesrechtes," I., 395 f.

² Blumer : "Bundesstaatsrecht," I., 16.

pure state rights became overshadowed by larger questions of unequal sectional equilibrium.¹

The same phenomenon appears in the Swiss republic, and the wedge of sectional separation was entered when cities began to be joined to a Confederation of pastoral states. Lucerne and Zürich were allies, vitally necessary to the maintenance of the League, but they brought in with them germs of division which were unfortunately allowed to bear fruit. The jealousies of democratic and aristocratic cantons are too familiar to call for extended details.

At the beginning there was no question as to the equality of all the states, but the more rapid enlightenment of the cities, their superior wealth and intelligence, soon gave them a directing influence. The country states saw the city states bent on widening their borders, buying here, conquering there, attaining more respect in foreign eyes than themselves, and exhibiting ambition beyond their own simple desires. They feared the towns would some day seek to annex them. Nor was this distrust entirely unwarranted, for the aristocratic cities invariably treated their country possessions less favorably than the municipal.

Consequently the democratic states often resisted good national policy for fear of giving greater influence to the cities. This was why the League of Eight shut its doors for a century and a quarter. So long as the country cantons had five votes, counting the mixed district Zug, they refused to admit Freiburg and Solothurn, which would have strengthened the hands of the cities.

Secondly, the principle of state equality, not necessarily state rights, came painfully near wrecking the republic at the close of the Burgundian war. It had up to that time been customary to divide all conquests and booty of war equally among all the cantons engaged. Territory was not parted, but governed in company, each state taking its turn at furnishing officers, and all sharing in the surplus revenues. This equal division, however, met with the increasing protest

¹ Pres. Welling of Columbian University. See "Secretary's Report," *Papers Amer. Hist. Assoc.*, vol. II., 72.

of the larger cantons, until, at the time the immense spoils of Charles the Bold were brought in, ill-feeling rose to a quarrel. On the one side it was claimed by the forest cantons that Bern had absorbed most of the territory for which all had fought, and on the other, by the larger states, that it was not fair that a little canton like Uri, for instance, should have an equal share with Bern, which furnished three times as many soldiers. Neither side would give way. Diet after diet failed to effect a reconciliation. Mutual reprisals and rumors of secret agreements added fuel to the flame. Civil war was about to burst out, when the words of one man, a pious recluse, Nicholas von der Flüe, laid the storm. He advised that lands be divided equally among the states, but movable spoils according to the number of men furnished for the war.¹ All parties accepted this very just compromise. The precious principle of state equality had been respected, and also there had been observed, for the first time in the history of the republic, the principle of numerical representation. But there the latter idea halted, and for three hundred years found no wider application. To the mountaineers, the founders of the Confederation, it seemed humiliating to have smaller voice in its affairs, and further compromise ceased.

Another separating influence was generated by the mercenary service. After the terrible defeat at Marignano, the Swiss refused, as a national undertaking, to fight any more for the benefit of neighboring powers, but would furnish recruits for their armies.² These were raised by the cantonal governments, and remained under their general orders in the field. Consequently, all the neighboring powers found it to their interest to create parties in these governments. They sowed pensions and dissensions right and left, and by thus working on the greed of men, fostered separation of interests among states none too strongly attached before. The

¹ The so-called Stanzer Verkommis, 1481. "Eidg. Abschiede," III., pt. I., 696.

² See, for example, the treaty with Francis I., 1521. "Eidg. Abschiede," IV., 1p. I., 1491.

native agents assisted them in this by creating rather than removing obstacles, in order that more money might be passed through their sticky hands.

When reform was attempted the mountain districts refused to accede, and insisted on their state rights.

Religious dissensions, also, following the Reformation, tore the frail Confederation into shreds, set region against region, canton against canton, and parted solid states.

The aggressiveness of both parties, upheld by the fervor of faith, caused suspicion and fear to arise between neighbors who had every reason for unity. Each canton clung jealously to its own individuality and ancient customs for fear that religious fanaticism would blot them out. Every now and then the republic would be split up into smaller confederations for the purpose of maintaining the rights of state sovereignty. Thus by these sectional strifes the idea of isolation was handed on, gaining strength as it went and becoming more and more a political instinct of the Swiss people.

In short, what the foregoing has attempted to convey is this, that the whole political education of that nation, from earliest times down to 1798, taught that states should manage no local affairs but their own.

In time of danger the sentiment of union, the necessity of mutual dependence warded off destruction, but the bonds of the Confederacy, like the ropes which bind adventurous travellers on Swiss mountain tops, were laid aside upon the level ground of local politics.

The nation was bound together by a glorious chain of memories, traditions, heroisms, sacrifices, but in the very battles for existence every man fought under the banner of his own canton, followed the regiment of his own district, kept step with the company of his own hamlet, or died beside his brother, son, or friend. This was the ancient German instinct and this the language of the war ordinances of the republic: "Let every man stand by the flag of his own land or city, after the manner of the fathers."

It came to pass that baser motives also weakened national

union till it hung by a single thread. Our own republic was nearly divided on a question of human property. The Swiss Confederation, on the contrary, was for a long time almost solely held together by the common ownership of subjects. The regulation and division of profits of territories held in partnership, where the people, though not slaves, were unequivocally subjects, came to furnish almost exclusive occupation for the federal diets. It was for the interest of the states to remain in the partnership, equally their interest to be individual, to enjoy a share, and to admit no more states to the union that this share be not diminished.

Towards the end of the 18th century the evils of this lack of union were recognized on all sides.

In 1798 the remedy arrived. A consultation of French doctors sat upon the case of Switzerland. Having rejuvenated France, the Paris revolutionists proposed to reform the rest of the world. Switzerland must be made a unit state, and so it was. The ancient cantons, cradled in independence and grown old in isolation, were suddenly transformed into departments of a single government and called the Helvetic Republic.¹

Not only that, but the forest states, proud originators of the Confederation, were lumped into one department, with the avowed purpose of gerrymandering out of power any democratic opposition to the new order of things. Bern, the greatest of the aristocratic cantons, was divided into four, and the subject territories erected into departments having equal rights with the others, much to their own delight, but to the great chagrin of their former masters. The state was to be ruled by a governor, a directory, a senate, and a great council, and the departments by a host of prefects, sub-prefects and officers never before seen in Switzerland, and all of them with unheard-of salaries. Swiss citizens were compelled to fight in French wars, in which they had no interest, and if they objected to this kind of government, French bayonets stood ready to convince them of its excellence.

¹ Constitution in Bluntschli: "Bundesrecht," II., 305.

The public moneys, of which some of the cantons had a huge store, were squandered, state property alienated, and a debt of 20,000,000 francs saddled upon the country. The Swiss grew tired of the new régime, and after a five years' miserable existence, it was chased across the border.

Napoleon Bonaparte by the Act of Mediation restored a large measure of the autonomy of the cantons, but left a central government much superior to that before the revolution.¹ Yet this improvement was accompanied by more French soldiers, by a forced dependence upon France in commercial as well as political matters, and by loss of territory at strong strategic points, which Napoleon thought would be more useful to him than to the Swiss. The new constitution contained a definition of powers found in the American Articles of Confederation, but discarded by the makers as well as by the amenders of our present organic law: "The cantons enjoy all the powers which are not *expressly* delegated to the Federal authority."² Yet under the dragonlike protection of France this was not an unmixed enjoyment, and such unity had little to recommend it to the patriotic citizen.

The fall of Napoleon was the signal for reaction. The greater cantons demanded a return to the old status and their ante-revolutionary supremacy. The relapse would have been worse had it not been for the allied powers, who would guarantee neutrality only on condition that the new cantons be maintained and free.³

The period from 1815 to 1848 was one of gradual political enlightenment, but the structure upon which improvement was made began with the words, "The twenty-two sovereign cantons of Switzerland," and finished its articles without an expression containing "Federal authority."⁴

Article 8 says: "The diet undertakes the management, according to the regulations of the treaty of Confederation,

¹ Bluntschli: "Bundesrecht," II., 322.

² Acte de Mediation, Chap. XX., Tit. 12. Compare with Amend. X., U. S. Const.

³ Vienna Congress, Art. LXXIV.

⁴ Bundesvertrag, 1815. Bluntschli: "Bundesrecht," II., 358.

of such matters as are laid upon it by the sovereign States of the League. It consists of the delegates of the twenty-two cantons who vote according to their instructions. Every canton has one vote which shall be made known by one delegate." They had, however, advanced to majority rule, and two-thirds could declare war.

The steps toward closer union during this period were many, but were the result of political renaissance taking place first in the cantons themselves, a realization of nineteenth-century necessities, and took the form of treaties among the states rather than of amendments to the general constitution.

Concordats,¹ on the laws of commerce, postal service, validity of marriage, and other subjects, showed the value of more centralization and wanted the people to its presence. But it needed the fright of one more danger to compress the republic into its present form. The Catholic secession of 1847-48 came so near to success, that the people gladly gave more power to the Federal authority, and in 1848 a constitution similar to that of the United States was framed which stands as the basis of the present revision of 1874.

Switzerland obtained its final union sixty years later than the United States, and yet remains behind them in central power; but, in consideration of what has been said, in consideration of national instincts, national experiences, and political education, is it any wonder that the words "sovereign state" should be conspicuous in its constitution? All the elevating memories of the national history, all the inspiring traditions which had been bred into national sentiment generation after generation, were connected with a league of states of almost insulated independence. The darker periods, when fraternal feeling lost its hold, and when disunion received its just reward, were enveloped in motives, religious, ambitious, or pecuniary, which are so deeply wrought into human nature that isolation, once engendered, easily perpetuated itself, grew deeper, and fastened itself into the national habit of thought.

¹ Bluntschli: "Bundesrecht," II., 388-428.

Then when solidarity was first offered, the form of it was so historically crude and so rudely forced upon the country, that, although common misery broke down many old prejudices, love for unity could hardly come out of it.

Reaction was a most natural result, and it needed the economic as well as the political advancement of this century to bring the state to its present form.

It is usual, in summarizing the history of Switzerland, to trace the growth of the federal idea, the tentative steps toward centralization. That is perhaps the more grateful task. But the opposite side of the question has been chosen for this occasion, in order to explain the existence to-day and the continuity from time past of a trait of character which has played a vital part in the evolution of that state. Confederation was the means of its greatness, but behind that, the motive to union, the mainspring of political combination, was desire for local independence. Without it the Swiss republic would not have existed. At the beginning there would have been nothing else to fight for. Later on there would have been no reasons for wider combinations, and although it was at times sadly abused, the Swiss people, as they look back over the history of their neighbors who fell under the power of dynasties, may thank fortune that the principle was preserved.

There are several other constitutional provisions which are accounted for by this same idea. The federal government is not allowed to keep a standing army. The situation is almost exactly the reverse of that in the United States, for the cantons are permitted to maintain three hundred standing troops each. The federal government, however, has a monopoly of powder manufacture and assumes control of all armies in time of war.

The Swiss conception of the national executive is also a natural survival. While we have gone so far as to say that the administration is vested in a single man, the Swiss republic, although it also has a president, declares, in Article 95: "The highest executive and directorial authority of the Confederation is exercised by a federal council composed of

seven members." The president is selected from one of these by the federal congress.

Central authority in Switzerland since the birth of the republic has always been vested in a committee, and in a committee it is to-day.

That peculiar veto power known as the Referendum in its present form is a modern invention, but the principle behind it is as old as the nation.

The word comes from the usages of the old federal diets, in which, as said above, the delegates did not decide matters themselves, but voted *ad referendum*, and submitted their actions to the home government. Where pure democracies continued, all law-making, of course, remained with the people, but in the more or less aristocratic republics it escaped their hands. The power to decide upon organic law was the first to be recovered. When an amended Helvetic constitution was submitted to popular vote in 1802 this was accomplished. The power to veto an ordinary law made by representatives was established for the first time in modern days, in 1831, in the Canton of St. Gall.¹ It was a compromise between the party which wanted to establish pure democracy, and the party of representative government. They agreed that, if enough citizens desired, any law could be submitted to the people. This was a triumph of democracy beyond the dreams of Rousseau. He had little hope that in his rigorous country true self-government would ever exist. The land was too large and too cold for town-meeting legislation. But by this happy thought, the citizen has been enabled to make or unmake the most important laws of his country, statutory as well as constitutional, without leaving his own village, or standing out in the cold.

It is, however, only the same old Swiss voter of centuries ago telling his member of the diet to conclude nothing important without his consent. The custom has since spread so that nearly all of the twenty-five governments in Switzerland have some form of Referendum.

The position which Switzerland occupies as a neutral

¹ Th. Curti : "Geschichte der schweizerischen Volksgesetzgebung," p. 128.

State, with liberal institutions, in the midst of countries less favorably endowed, is one which attracts our sympathies. We pride ourselves in our land of the free, the refuge for the poor and oppressed of every clime. Switzerland shares this mission with us, and has long been a retreat for the dissatisfied and the exile. But more than this, its central situation, combined with its neutral politics, has given it an international function which is interesting to note. Uncontaminated by the ambitions of its neighbors, it offers to contending nations a quiet spot in which to settle their disputes by the peaceful means of arbitration. It is not only a place of occasional conventions, but also the established centre of a host of continuous international agreements, commercial treaties, the universal postal union, the telegraphic union, and others, which render peace and freedom necessary, and therefore secure within her borders. A poet might look forward here to see the parliament of man, but the historian, looking back, will find again the ancient Alamanni.

They tell us now that this name comes down from "Alah,"¹ sacred groves which once existed in primeval Germany, and formed a central gathering-place for the tribes of the Semnones. Here the nations, born to war and nurtured in contention, met on holy ground. Here strife was laid, and bound by ties of one religion they joined, if only briefly, in common reverence of higher things.

These Alah-men moved on. Their country was for centuries a scene of war, but now again in these last days it is a place where swords are sheathed, a sacred spot, an oasis of peace.

After the reading of Mr. Vincent's paper, ex-President Andrew D. White of Cornell said, by way of discussion, that the paper pleased him because of the comparative method used in it. He thought it very desirable that students and others should be led to compare the institutions of other countries with those of the United States in order to get new ideas. Travellers in Switzerland found that in many things they do better there than here. Roads, for in-

¹ Dändliker : "Gesch. der Schweiz.," I , 84, note.

stance, were greatly superior to those of New York State, where it is said the middle of the road is the most fertile part of the country, since it is annually plowed up.

In educational matters, also, they had a way of doing things at once instead of waiting for some one to give the money and keep his grasp on the interest of the country for centuries after he is dead. The speaker was reminded of other curious survivals which the paper would doubtless have mentioned had time allowed. Especially the curious combination of feudal with democratic ideas in some of the most purely democratic cantons. He said that he visited last summer the Swiss ambassador at Berlin, who resides at home in Appenzell. In this canton the laws are made by popular vote, and they elect every year a landammann or governor. In the house of this ambassador he saw three swords hanging over the shield, which had been the State swords of his grandfather, father, and himself when they were landammann. The son also when addressed as the young landammann took it also as a matter of course, a natural state of things. It was a curious mixture of democratic government following family lines. He hoped that the writer of the paper would continue his studies in the lines indicated, and wished also to see in all our universities schools of comparative legislation such as Laboulaye had in France for the study of the methods by which various countries had tried to solve political problems.

THE FEDERAL GOVERNMENT AND THE CANTONS.

The Swiss Confederation is composed of twenty two states which differ widely in extent and population. Three of these are divided into "half-cantons", as they are called, so that altogether there are twenty five governments within the confines of the territory. In extent they vary from 2,774 square miles for the largest to 14 square miles for the smallest, and, in population from 533,000 to 13,000. Altogether the Confederation covers about 15,333 square miles of territory, or about as much as the states of Massachusetts, Connecticut, and Rhode Island, together with Long Island, and contains about 3,000,000 inhabitants.

Differences in the physical character of the various parts of the country are also very marked, causing differences of occupation to the inhabitants, variations in personal characteristics and leading, especially in early times to different ideas of government and society. Differences in language also, dating from the settlement of Helvetia after the fall of Rome and perpetuated by the natural divisions of the country have emphasized these various political instincts and given to the institutions of Switzerland an unusual diversity, which, though now disappearing under the influence of rapid communication, adds interest as well

as difficulty to the study of its history.

As indicated by the name, the form of government which binds these diverse elements together is not that of a Unitary State in which the Cantons act as administrative divisions, like the departments of France, but it is a Federal State, in which certain powers are delegated to a central government while the rest are exercised by the individual parts. In this it resembles the United States of America, but with certain minor differences which will appear as we proceed.

The Cantonal constitutions, and the Federal as well, declare with one accord that "the Cantons are sovereign in so far as their sovereignty is not limited by the Federal constitution, and as such exercise all rights which are not delegated to the Federal power". They might perhaps be more strictly defined, as autonomous states, united, for purposes common to all, in a central government; the sovereignty residing in the people as a whole, but finding two modes of expression, one for local, the other for general purposes.

They were formerly sovereign states and lived under a league like so many foreign powers, but when they joined in 1848 in forming a Federal compact, they came, like the United States in 1788, into a new state which seemed but a natural growth from the old, but which mocks at precise definition.

The line of demarkation between the functions of state and nation is not so strictly defined in Switzerland as in America. In the United States the powers given to the Federal government are wielded by it exclusively, but in Switzerland it will be seen that the Cantons in some cases join hands with the central government in exercising general functions. This is the case in the organization and maintenance of the army. Cantons are also allowed to make treaties with foreign powers on minor matters, whereas in America the Federal government is the only treaty making power. Differences will be noted in other branches of state, but, it may be said in passing, that a tendency toward centralization is distinctly visible in the history of administration since 1848. In fact whole fields of legislation which were not thought of at the formation of the constitution in 1848 have been almost by necessity given over to the central power.

The foremost point of contact between Confederation and Canton will be found in the guarantee by which the former sustains in each state its territory, its sovereignty, the rights and privileges of its people and citizens and the rights which its people have delegated to its authorities. The Federal government of the United States simply guarantees to each state a republican form of government, with no mention of its name, size, or boundaries, but the peculiar fact will be noted in the Swiss constitution that the

Cantons are all enumerated by name as the twenty two sovereignties which compose the confederation, with the result that no enlargement can be made, either by addition from without or by subdivision within, without an amendment to the constitution, or in other words by general consent. In case a foreign state threatens to deprive a Canton of part of its land resistance is thus made a Federal matter. The question of additional members of the confederation did not, at the time of the formation of the constitution, depend on the development of large unreclaimed territories in the vicinity of the states, but had already long been practically settled by the events of history and the divisions of nationality.

Again, when states revise their constitutions they must submit the amendment or revision to the inspection of the central government, and if the two houses of the Federal Assembly agree that nothing therein contravenes the Federal Constitution, then, and not before, can the act take effect. If there are defects of this kind in the instrument they are pointed out in the legislative report and the result is, that, although the state may not expunge the objectionable clauses at once they are regarded as void. Comments are also sometimes added respecting doubtful clauses to the effect that they must not be interpreted to mean this or that, thus forestalling any future or hidden strain upon the Federal constitution.

The control over state government in this matter is thus made much more direct than in the United States, where the Federal power through its Supreme Court, exercises a right of veto on state constitutions, but instead of pronouncing in advance, waits till some person has suffered and a concrete case at law comes before it. This method is in the end as effective, but more circuitous and tardier in action. In both cases, however, this control is not the arbitrary interference of a central administration, but is based on a contract to which all originally agreed. The Cantonal constitutions must themselves assure to their citizens the exercise of political rights according to a republican form of government either representative or democratic, and must be subject to revision whenever a majority of citizens demand. Consequently a similarity of institutions is provided but with wide scope for individuality in local government. It would not be possible for any state to erect itself into a principality, nor to exclude a large number of its citizens from the exercise of political rights without invoking the interference of the Federal Government.

In order to make its own guarantee effective one central power must have a monopoly of the affections of its constituent parts. Hence every other political alliance between the Cantons is forbidden. They may make agreements on matters of administra-

tion or internal legislation of common interest, not contrary to the general constitution, but nothing like treaties of offense and defense can be tolerated. Such provisions might well be expected in the constitution of the Swiss. Nothing is more glaring in the history of that country than the evil of separate alliances.

Ever since the time when cities were first joined to a Confederation of rural states there has been a tendency to combine into separate leagues. The religious animosities which rose out of the Reformation strengthened these centrifugal forces till finally the secession of 1848 brought the country to the verge of ruin. Aroused by the danger so narrowly escaped the Swiss at once formed a central government worthy of the name, and settled once for all the question of separate alliances of states.

As to dangers from internal disturbance either between the individual Cantons or insurrection within a state, the Federal government has a certain power of intervention. The Canton threatened shall at once advise the Federal Council of its predicament, and the latter shall take such measures as it finds necessary or convoke the Federal Assembly. In case the Cantonal government is not in condition to invoke aid the Federal authority may intervene without a requisition, especially when such a disturbance compromises the safety of the country. But such distur-

bances are in a measure forestalled by the agreement of the states not to take up arms, as found in Article 14. "The Cantons are bound, if strife arises between them, to withhold themselves from the taking up of arms or any measures of self-help and to submit to the Federal decision".

As stated in the second article of the Constitution, the object of the Confederation is to maintain the independence of the Fatherland, to uphold peace and order within its borders, to protect the liberties and rights of the citizens and to further the common welfare. To this end, exclusive jurisdiction was given the central government in certain fields of law. Foremost among these naturally stands the relationship of the state to foreign powers. In peace or war the state to be effective must act as one. Hence the Federal government alone has the right to declare war and to make peace. Hence also has it alone the right to enter into international agreements and treaties of a political or commercial nature.

The apparent limitation to the treaty-making power, mentioned above, where Cantons are allowed to make agreements with foreign states on certain administrative matters is overshadowed by the provision that the official correspondence on such affairs shall be carried on by the Federal cabinet.

Although the Federal government cannot maintain a stand-

ing army, but depends on the contingents of the Cantons, yet it controls the forces of war by the provisions that all legislation on the subject shall proceed from the central power. While the Cantons assist in the execution of the law, the whole question of military instruction, of choice of weapons, of manufacture of powder and in event of war the command of the troops rests with the Confederation.

Looking inwardly, the powers of the Federal government will be seen to affect the commonwealth in three general ways, first. through its influence upon the government of the Cantons, second by laws which indirectly act upon the general public, finally by contact with the citizen himself. ¹

¹ The exclusive powers of the central government are further treated in the chapter on The Confederation and Society.

THE FEDERAL LEGISLATURE.

The lawmaking powers of the general government are intrusted to a Federal Assembly composed of two chambers which are distinguished as the National Council and the Council of States. The more numerous body is the National Council and occupies a position similar to that of the American House of Representatives. Its members are chosen by districts numbering 20,000 inhabitants, or fractions over 10,000. Every such district sends one representative and may choose any Swiss citizen not of the clerical profession.¹ The apportionment is made according to a decennial census and the number of members has increased since 1850 from 120 to 145. The districts must lie entirely within cantonal borders, hence sectional representation receives its due acknowledgment, through the fractional districts.² Yet there is the widest difference between the Cantons with regard to the number of representatives. Bern sends twenty seven deputies while Uri, Zug, the half-cantons Obwalden and Nidwalden and Appenzell-Interior have but one each.

¹ This provision is aimed especially at the Jesuit order whose activity in Swiss politics formerly awakened much opposition.

² Election jugglery is not unknown even in Switzerland. The cutting of districts to suit party purposes, or what is known there as "Election-district geometry" (*Wahlkreisgeometrie*) has been tried, but only in small measure. Dubs. *Öffentliches Recht*. II, 46.

The election is direct and any Swiss citizen who is twenty years of age and otherwise capable according to the laws of the Canton of his residence can take part. The term of office is three years and the whole body is subject to re-election at the end of that time. ¹ The members receive payment for their services out of Federal funds according to the amount of attendance. The rate at present is twenty francs per diem with mileage. ²

A President and Vice President of the Council are chosen at every session neither of which offices can be filled by the same person during two consecutive sessions. The President has a casting vote when the house is equally divided on a measure, but in elections votes like any other member.

The Council also elects from its own number four tellers, who with the President and Vice President form what is called the Bureau. To this Bureau is entrusted the nomination of most of the committees, the business of looking after the absentees and their excuses and certain other matters.

Two ordinary sessions are held every year beginning on

- ¹ Elections for Nat. Council must take place in all districts at once on the last Sunday in October, by secret ballot.
- ² Mileages are fixed by an official "Distance Gazette" which includes almost every hamlet in Switzerland. The rate is 20 centimes per kilometer each way with 10 cent. per kilometer additional for mountain passes.

the first Monday of December. The summons proceed from the Federal Council (Cabinet) or if this should fail, from a demand of one fourth of the members of the House itself, or that of five Cantons.

The record of proceedings is kept by the Federal Chancellor or his deputy. This officer is elected by the two houses together for the same term of three years, and is responsible for the records of both. But being also Secretary to the Federal Council and having other duties which will be mentioned in their place, he occupies a different position from that of the ordinary parliamentary secretary. His functions are more like those of the Secretary of State in the American commonwealths with the additional duty of keeping the daily records of the two houses of the Assembly. This gives a certain unity to the whole administration of records.

THE COUNCIL OF STATES.

When the evils of the old system of government by a Diet of special delegates finally became unendurable it was resolved to adopt the bi-cameral system which had been so long in operation in England and America, and for longer or shorter periods in other countries of Europe. The basis for such a division could not be the same as that in England because the constitution at the same time declared that there should be no distinction of classes in the Confederation by reason of birth, title or privilege. Hence the American plan of representing the States as such in a house by itself came nearest the condition of things in Switzerland.

The Cantons are represented by two delegates each, making forty four in all, the manner of election the term of office and the amount of compensation being determined entirely by the states themselves. Thus a great diversity of methods obtains in these particulars. In some Cantons the delegates are elected by general popular votes, in others by the legislature. The term of office varies from one to three years and the tenure being likewise variable there is liability of continual change in the personal make-up of the Council.

Thus an assembly which fully represents the state-rights idea has been formed but without the regularity of construction,

the facility in conduct of business, nor the dignity which long tenure and ability in legislation should naturally clothe a Senate.

Owing to this fact the best talent in political life prefers to sit in the National Council and consequently the center of gravity in federal affairs is to be found in the lower house.

The organization of the Council of States is similar to that of the National Council, having a President and Vice President chosen at every session.

F U N C T I O N S O F T H E F E D E R A L A S S E M B L Y .

In general terms the Federal Assembly takes into consideration all matters which lie within the province of Federal Government. When the particulars are inquired into it will be seen that in addition to legislative duties it also has certain administrative and judicial functions. The Assembly not only maintains an oversight of those other branches of government but elects the officials who carry on the work. The Federal Cabinet, the judges of the Supreme Court and the Chancellor, or Secretary of State, all owe their positions to the vote of the Legislature.

It acts as a judicial body as a last resort in deciding on complaints against the Federal executive and on questions of

competence between different departments of the government. Its properly legislative functions include laws upon the organization and election of Federal officials, their emoluments, treaties with foreign powers and ratification of agreements among Cantons, the annual financial appropriations and more fundamental than all the power to act as a Constitutional Convention when it so desires, or when a popular vote demands.

When acting in legislative capacity the houses deliberate apart, and measures must obtain a majority of votes in both to become laws, but when electing Federal officials or sitting as a court of justice the chambers meet together and matters are decided by a majority of all the members combined.

Freedom of speech and liberty of action in voting are guaranteed. No positive instructions can be forced upon a representative in either house, by his constituents. Inviolability of person and freedom from arrest, except for crime, during term of office are further safeguards placed about the legislator.

NOTE. Yet certain kind of responsibility is said to be placed upon members of the Council of States in some cases where they are elected by Cantonal legislatures. This latter body sometimes requires their members to give an account of themselves and thus exercises an *ex post facto* control. Law on the subject, Amt. Samlg. 2,149. Wolf's Collection p.29.

THE CONDUCT OF BUSINESS.

At the beginning of each session the Federal Council sends to the President of each house a list of the matters which have been placed in its hand to bring before them, with comments showing the stage at which each measure has arrived. These may be subjects which have been previously referred to the Council for opinion, or new matters brought to the attention of the Assembly by state governments or by private individuals. The Presidents then consult together as to which house shall first deliberate upon each measure, and having come to an understanding, each lays before his own Council at its first or second sitting the result of this division.

When bills are under discussion the presence of a majority of members is necessary to form a quorum, and a majority of all votes cast is necessary to enactment. When passed by one house they are signed by the President and Secretary and sent to the other chamber. If passed by that body also the bill is returned to the first chamber which enacted it and by that given to the Federal Council for promulgation. If amendments occur the measure is referred back and forth between the houses till agreement is reached or the matter dropped. When an amended bill is brought up for discussion the points upon which an agreement has been

reached fall out of consideration and the further debate is confined to matters in dispute.

Members of the Federal Council have a right to speak in either branch of the assembly and to make motions upon any subject at the time under consideration. They are also subject to interpellation as to the conduct of affairs and must answer at the same or the following sitting.

The daily sessions begin in summer at 8 o'clock in the morning and in winter at 9 and continue as a rule five hours. Members are required to appear in black clothing¹ and to answer to their names at roll call or to furnish an excuse to the President. Absentees are noted in the minutes and if they do not appear within an hour, or are absent without excuse they lose their pay for the day.

Business can come before the houses either in form of (1) Motion, Bill, or Report from the Federal Council, (2) a communication from the Council of States, (3) Report of a Committee, (4) Motion of a member, (5) or by way of a petition. The President having fixed the order of the day beforehand, precedence takes place according to the calendar. The motion or report is then

¹ A reaction against the airs assumed by senators and representatives of the Helvetic Republic who distinguished their rank by conspicuous garments, hats or sashes.

read in two official languages, German and French. Members of the committee have at this time a right to add explanations or note their dissent from the report, and thereupon the debate opens.

Members address the house from their places, and may speak to the question not more than three times.¹ Those who desire to take part may give their names to the President after the debate has opened and he is required to keep a list of those in the order in which enrolled and to grant the floor accordingly. Members may use either the French, German or Italian languages as educated Swiss are apt to know at least two of these but if any one so requests, the Translator, a functionary who assists the Secretary, must give the substance of addresses made. The debate may be brought to a close by a two-thirds vote, but must be kept open so long as any member who has not yet spoken desires to make a motion and to defend it.

When a bill is brought for discussion the ordinary procedure is to first decide whether the subject will be entered into at all and if decided affirmatively to discuss the project at once either as a whole or article by article. But for changes in Federal private law (Civilrechtsgesetze) special regulations are in force. Having decided to enter into the subject and then after

¹ It is forbidden to read speeches from manuscript.

discussion having voted to make certain changes the resolutions are referred to the Federal Council who shall present a final bill adapted to the condition of existing statutes. Thus the confusion in which a measure often finds itself after a long debate, and the conflicts which may in haste be overlooked can be corrected by a body of men who are engaged in the execution of all classes of law, and can place the demands of the assembly in logical relations.

Committees are appointed to consider business of all kinds, but bills are referred to them, not of necessity, but by vote of the house in each case. These committees may be chosen by the chamber by open or secret vote, or the appointment may be left to the Bureau, mentioned above which consists of the President and the four tellers. According to a rule of the Council of States all committees in that body on certain groups of business, as Railroads, Military, etc. shall be newly appointed every year,

a decision which one would think would add to the weakness of that body. The Presidents of the two houses are required to see that certain committees meet before each session so as to have some business ripe for discussion at once.

The rules of the Council of States do not differ essentially from those of the lower house. Both are characterized by a desire to have matters carefully examined and to give full op-

portunity for discussion. The Chambers are not so large as to demand a clôtare for the expedition of business, and obstruction does not seem to be much in vogue.

Bills having been passed by both houses, are promulgated by the Federal Council. In most other countries such acts become laws at once on the date appointed in the publication but in Switzerland there is another power to be heard from before a measure can be truly said to have been enacted. For ninety days the law may be said to be on probation, for if within that time 30,000 citizens demand it must be submitted to popular vote and acceptance or rejection decided by that. ¹ If no vote is demanded the law is again promulgated by the council at the expiration of the limit and placed on the statute books.

¹ See Referendum.

THE LAW AND THE PEOPLE.

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FEDERAL REFERENDUM.

The statement just made, that the Legislature was not in all cases, the final source of law, is worthy of further elucidation. The submission of statutes to the popular vote, or the Referendum, is an institution peculiar to Switzerland. The history of its origin and growth, however, is more fully treated under Cantonal Government, where it is carried to greater lengths than in the Confederation, and only the provisions for the federal plebiscite will here be noted. ¹

All laws, "not of an urgent nature", are published immediately after passage, a sufficient number of copies sent to the Government of each Canton, and for ninety days submitted to inspection. The question as to whether a bill is urgent or not is decided by the Federal Legislature itself, and if so, the Federal Council is ordered to put the same in force at once. If during this period of probation a sufficiently representative body of citizens demand a popular vote the bill must be submitted to that ordeal. It will be observed that again both the democratic

¹ Fed. Const. Art. 89. Amlicone SMER. N. N. 1.116. Wolf p.74, etc.

and the federal idea may be represented in his expression of opinion. The thirty thousand citizens, being about one hundredth part of the whole population, or about one twentieth of the voters, stand for the former principle. But if the request come from the legislatures of eight Cantons the effect is the same. No Canton, however, has as yet used this privilege, the demand always arising from popular agitation.

The request for Referendum takes the form of a written petition addressed to the Federal Council. The petitioners must sign the same with their own hand. The signing of any name but his own subjects the voter to the penalties of the criminal law. Furthermore the signer must prove his right to vote before the officers in charge of the petition and the qualification of all petitioners in each precinct must be attested by the proper authority. To make an expression of opinion as free as possible the authorities are forbidden to take any fees for the witnessing of signature.

If, after careful examination of the returns, the Federal Council finds the request is supported by the required number of citizens or Cantons, it orders a general election, notifies the various state governments and provides for a generous publication of the law or resolution. The date of the election can not be less than four weeks after the announcement, and must

by the same day for the whole Confederation. The voting takes place under the charge of the Cantonal authorities according to these general regulations; every Swiss citizen who is in full possession of his civil rights having the privilege of participation.

If a majority of all votes cast are in favor of the law, it is accepted and the Federal Council orders it placed in the statute book. A contrary vote puts a stop to its execution. In case no petition is submitted, the Federal Council announces this fact at the expiration of the ninety days and the bill becomes a law.

It will be seen that this petition is no ordinary expression of sentiment to be gathered on street-corners for the asking. It is a serious act of sovereignty, surrounded by all the precautions of an election, and when signed cannot be acted upon, or not, at the convenience of the administration, but is a command on the part of citizens to submit a law to vote. The Legislature can not consider its work done until the constituents have been heard from, and the people are not obliged to suffer unpalatable legislation until a new set of law makers is elected.

The advisability of this institution has been the cause of a great amount of discussion both in and out of Switzerland.

It was not adopted as a new creation in 1874, since it had been gradually coming into the Cantons since 1831, yet the principle has not been accepted without question. It is certainly a realization of democracy which surpasses the fondest hopes of the eighteenth century theorists, yet there is a conservative element about it which surprised its early sponsors. Introduced as a democratic and progressist weapon, the liberals found after a time that the people would not move so fast as they wished and could use the Referendum to cut both ways. The Swiss have at times rejected laws which, in all reasonableness would seem to have been for their own good; on the other hand, they have not made an excessive use of the veto power, and have corrected at a later election mistakes of other days. Less than twenty per cent of the laws coming under the rule have been submitted to popular vote though it seems as if most of these were called out to be rejected. It would not be just to draw inferences from the percentage of accepted and rejected laws simply out of the number put to vote, but the whole body of legislation, those referred and those allowed to pass in silence, must be taken into consideration before any certain veto tendency can be assumed.

It must be conceded that legislation has been advancing upward, slowly but steadily, since the formation of the present Confederation. The tendency toward centralization has not gone

on as fast as the law makers would have liked, and the common voters have made themselves felt in opposition to it; the old instinct of separation has been hard to lay aside, but notwithstanding passing political breezes, this same people has continued to make its Federal government more and more effective.

CONSTITUTIONAL REVISION.

The Federal Constitution is perfect for no definite period of time. It exists, as it were, defining good behavior and can at any time be amended or totally renewed. Revision is made by the Federal Assembly, when both houses agree that such procedure is necessary or when 50,000 voters demand it.

When one house of the Legislature votes for revision and the other fails to agree to it, or in the case where 50,000 voters demand a change and the Assembly does not act upon it, the question must be submitted to popular vote, and if a majority of citizens agree to have the constitution amended, both National Council and Council of States undergo re-election and the revision is undertaken by this new body.

The work of revision takes place according to the usual process of making law. The Constitution of 1874 was laid before the Assembly in the form of a motion of the Federal Council. This was referred to committees in each house and finally voted on ar-

icle by article by those bodies in full session. The document as finally passed by both houses must then be submitted to popular vote. If it receive the approval of a majority of all the people and at the same time a majority of all the Cantons the revision becomes law and goes into effect as soon as promulgated by the Federal Council.

In determining the majority of Cantons those which are divided count as two half votes and the result of the popular vote in each Canton counts as the voice of the state.

It will be seen from this that the Federal Constitution of Switzerland is brought nearer to the people than that of the United States, which is adopted by the Legislatures alone of the various states. Also that it is not as difficult to change by reason of the fact that the voting is all done on one day and agitation can be carried on in one campaign as it were. Instead of forty two legislatures to be dealt with separately, and who may act somewhat according to the votes of other states, a whole people is called upon to express its opinion at one time and the result by states is determined by analysis of that vote. There is a possibility that one third of the Cantons containing a majority of the citizens might be overruled by a minority in the remaining states, but such a conflict is highly improbable as it would require these Cantons to vote solidly on one side allowing for

little or no division of opinion. In all the votes hitherto taken on constitutions and laws the majority of states has been always coincident with a popular majority.¹

- ¹ An interesting account of the growth of democratic law-making, both constitutional and statute, is to be found in Curti, *Geschichte des Schweizerischen Volksgesetzgebungs*.

THE FEDERAL EXECUTIVE (BUNDESRATH).

The chief executive power of the Confederation is vested in a committee chosen by the Federal Assembly in joint session and called the Federal Council. ¹

This Council consists of seven members who are elected at the beginning of every new term of the lower house of the national legislature and hold office for three years. Any Swiss citizen who is qualified to sit in the National Council is also eligible to the cabinet, except that near relatives by blood or marriage, or two persons from the same Canton cannot be elected at the same time. Members of the Federal Council shall not at the same time hold any office either State or Federal, nor engage in business or exercise a profession. They receive a salary from the Federal treasury. ²

The chairman of the Council is also chosen by the Legislature and is known as the President of the Confederation. His alternate is called Vice-President of the Federal Council. The retiring President cannot be elected either to the same office or to that of Vice-President for the year ensuing, nor can the same

¹ Federal Const. Articles 95-104.

² Salaries at present, for members 12,000 francs each, with 1,000 francs additional for the President. Antliche Sammlung, I, 45 Wolf p. 98.

member serve as Vice-President during two consecutive years.

The duties of the Federal Council are in general, to administer the affairs of the Confederation, to keep a watchful eye upon the conduct of government and to guide in a measure the course of political activity.¹ Since the composition of this executive is somewhat unusual, it is desirable to look into its functions more particularly.

1. It conducts federal affairs, conformably to the laws and resolutions of the Confederation.

2. It takes care that the Constitution, federal laws and ordinances, and also the provisions of federal concordats, be observed; upon its own initiative or upon complaint, it takes measures necessary to cause these instruments to be observed, unless the consideration of redress be among the subjects which should be brought before the Federal Court, according to Article 113.

3. It takes care that the guaranty of the cantonal constitutions be observed.

4. It introduces bills or resolutions in the Federal Assembly, and gives its opinion upon the proposals submitted to it by the Councils or the Cantons.

5. It executes the laws and resolutions of the Confederation and the judgments of the Federal Court, and also the compromises or decisions in arbitration upon disputes between Cantons.

¹ Fed. Const. Art. 102. 7

6. It makes those appointments which are not assigned to the Federal Assembly, Federal Court, or other authority.

7. It examines the treaties made by Cantons with each other, or with foreign powers, and approves them, if proper. (Art. 85, 3)

8. It watches over the external interests of the Confederation, particularly the maintenance of its international relations, and is, in general, intrusted with foreign relations.

9. It watches over the external safety of Switzerland, over the maintenance of independence and neutrality.

10. It watches over the internal safety of the Confederation, over the maintenance of peace and order.

11. In cases of urgency, and when the Federal Assembly is not in session, the Federal Council has power to raise the necessary troops and to employ them, with the reservation that it shall immediately summon the Councils if the number of troops exceeds two thousand men, or if they remain in arms more than three weeks.

12. It administers the military establishment of the Confederation, and all other branches of administration committed to the Confederation.

13. It examines such laws and ordinances of the Cantons as must be submitted for its approval; it exercises supervision over such departments of the cantonal administration as are placed under its control.

14. It administers the finances of the Confederation, introduces the budget, and submits accounts of receipts and expenses.

15. It supervises the conduct of all the officials and employees of the federal administration.

16. It submits to the Federal Assembly at each regular session an account of its administration and a report of the condition of the Confederation, internal as well as external, and calls attention to the measures which it deems desirable for the promotion of the general welfare.

It also makes special reports when the Federal Assembly or either Council requires it.

For the more convenient transaction of business the work of the cabinet is divided into seven departments having one Councillor at the head of each. The precise arrangement is neither established by the Constitution nor by statute, as in the United States, but by order of the Federal Council itself. A re-adjustment of the departments took place in January 1868 and the order is now as follows:¹

Department of Foreign Affairs,

¹ Amtliche Sammlung N. F. X. 104. Wolf p. 94.

Department of the Interior,
Department of Justice and Police,
Department of Military Affairs,
Department of Imposts and Finance,
Department of Industry and Agriculture,
Department of Posts and Railroads.

Although administration is thus divided up, the heads of departments are not in law the final authority upon questions decided. Decisions must proceed from the Council as a body.¹ All matters directed to the cabinet are opened by the President and by him assigned to the proper department for consideration. The secretaries may decide points coming before them and order their execution directly, if they are so disposed, but on the understanding that a vote of the whole Council is held in reserve for use when called for.²

It will be observed that although the members of the Federal Council have similar duties to those of the Cabinet of the United States government, the theoretical bases upon which they rest and the sources of responsibility are widely different. In America, as it is, in fact, in all monarchical governments, the

¹ Fed. Const. Art.103.

² Law of Organization. Amtliche Sammlung N. F. III, 460.

executive power is vested in one person, and the members of the cabinet are his appointees and subordinates. Though the cabinet may take counsel together the action resulting is that of their chief. The various secretaries are answerable for their conduct of office to no one but the President of the United States, and upon him their tenure depends.

But in Switzerland the Federal Cabinet is a creation of the Federal Legislature and each Secretary holds a separate commission. Tenure of office is not dependent on the President but is fixed by the Constitution at a definite term of years. Re-election is possible but always at the hands of a new Legislature. Practically, cabinets in America have a fixed term of four years, but here a faithful official has a legal claim upon a three years tenure, which he may not be deprived of except by decree of court.

Neither is this a ministry which rises and falls with the measures which it advocates. It is usually elected by the party of the majority but does not feel called upon to resign when one of its bills fails to pass. The proposal of legislation is one of the duties laid upon the Council. It is expected to lead the way in making and changing Federal law, but it has no autocratic rights of initiative even within its own party. Any member of the Chambers may move the adoption of a bill, but all are sub-

mitted to the Council for an opinion, and must be returned within a certain time. The Budget is especially its work and it must report on the management of the finances. In short, all bills, whatever their source, at some time pass through the hands of the Council and are stamped with their approval or disapproval.

When, however, projects urged or approved by the cabinet are rejected by the Legislature the ordinary parliamentary result does not take place. Self respect of ministers is not called in question because they were elected for the very purpose of giving their honest opinion on legislative proposals and if this opinion does not agree with that of the Legislature, they prepare bills which will be acceptable. Instances are rare where ministers resign on account of disagreement with their colleagues, or with the majority, and they are usually re-elected as long as they desire the place. Men who have proved capable administrators are kept in office term after term. Of the Cabinet of 1869 one had been in service since 1863, another since 1866 and nearly all more than one term. This long tenure has been partly due to the fact that the same party or some shade of it has been in power most of the time; but parties have not always upheld the projects of their own ministers, yet when their terms expired have given them re-election. It has happened that good executive abilities have brought men of different parties into the same cabinet. They were

kept there because they understood the business.

It will be observed that such a thing as a "cabinet crisis" is out of the question. Violent and rapid changes of ministries, one of the chief objections to parliamentary government, are overcome by the fixed tenure of office, and although the Legislature has opportunity once in three years to renew the national executive, public opinion or tradition, or business instinct, if you choose to call it so, keeps the faithful officer in a place of usefulness.

Consequently, the administration of affairs has reached a high degree of perfection. The Cabinet officers are, it is true, more like the heads of Bureaux in other countries, than like the political ministers of France or England. They are immediately in contact with the details of their various departments as well as guides and directors of policy. Hence two kinds of ability are called for which may not always be united in the same person, namely, genius for details and great political insight, and the first may be cultivated at the expense of the other. Still, however that may be, the Swiss have certainly learned the science of administration, for in all departments, they succeed in showing remarkable results for the amounts expended. It cannot be said that the pecuniary inducements to enter political life are great, but the honor attached to a cabinet office and the reasonable se-

T H E F E D E R A L J U D I C I A R Y (Bundesgericht).

If space allowed a most interesting chapter might be written at this point on the history of federal courts in Switzerland. It offers a valuable subject for study in the development of legal institutions. But it must suffice to say, that, at the very beginning of the Confederation in the thirteenth century, a method of settling interstate disputes was organized, which, though it took the rude form of committees of referees, chosen as the occasion demanded, contained the germ of the modern federal court. Its growth as an independent institution however, was not vigorous. The tendency in modern times, was to make the Federal legislature the final resort on great questions of law, but the revision of 1874 finally placed it upon a more logical basis.

The Bundesgericht as now constituted, consists of nine judges and nine alternates, all of whom are elected by the Federal Assembly for terms of six years. The election is open to any Swiss citizen who is qualified to sit in the National Council, but in making choice the legislature must see that all three national languages are represented and that the judges are in no way related to each other. A President and Vice President are also chosen from among these for terms of two years. The alternates are persons who are called in on occasions where the regular judges are

unable to serve. The court appoints its own recorders and other necessary clerks. The salaries are \$2,000 for each judge with \$200. additional for the President during his term, while the alternates are paid by a per diem as occasion demands. Judges may not sit in either house of the Federal legislature nor engage in any business or professional occupation.

The civil jurisdiction of the Bundesgericht, as a court of first instance considers disputes between

1. The Confederation and the Cantons.
2. Between the Confederation on the one hand and Corporations or individuals on the other hand as plaintiffs when the amount involved reaches 3,000 francs.
3. Between different Cantons, but only on questions of private law and when the complaint is made against the fiscal administration.
4. Between Cantons on one hand and Corporations or individuals on the other when the amount in controversy is at least 3,000 francs and one party has appealed.
5. Between communities of different Cantons on questions of citizenship.
6. Appeals by Cantons from decisions of the Federal Council on matters relating to the civil rights of persons who have no legal residence (Heimatlosigkeit).

The Federal Court also considers questions which are specially delegated to it by Federal law. Thus far these have related entirely to railroads, including right of expropriation, controversies with the state and individuals, and the liquidation of these corporations.

As a court of revision the Bundesgericht also hears certain appeals from Cantonal courts where parties agree to carry them up.

The Criminal Jurisdiction of the Federal Court covers

1. Treason against the Confederation Riot and violence against Federal authorities.
2. Violation of International Law.
3. Political Crimes which have caused armed intervention.
4. Cases where a Federal official has been handed over to the court by the authority which appointed him.
5. Other criminal cases which are referred to it by Cantonal governments with the consent of the Federal Legislature.

The Constitutional Jurisdiction includes

1. Conflicts as to competency between Federal and Canton authorities.
2. Constitutional and political conflicts between Cantons, as for instance the interpretation of intercantonal agreements, conflicts of competence of cantonal authorities, boundary lines,

extradition.

3. Complaints of individuals or corporations against violation of the rights guaranteed in the Federal and Cantonal constitutions and in the Cantonal Concordats.

For the conduct of criminal business the court is divided each year into three chambers, the Chamber of Complaints, Criminal Chamber, and Chamber of Appeals. (Anklage-kammer, Kriminal-kammer, Kassations-kammer). All but the latter consist of three members each. The last and highest being the final resort in criminal matters is composed of the President and four judges.

The Confederation is divided into five large Federal Districts. (Assisen bezirke.) and the criminal chamber sits from time to time in each. The trial of such cases is always conducted before a jury made up from a list of persons especially elected.¹ The Government does not have standing attorneys but appoints an advocate for each case.

When considering civil and constitutional matters the court always sits in bank, yet the presence of seven judges is sufficient. Hence the alternates spoken of above are rarely called upon and the necessity for their appointment is quite doubtful.

¹ Federal Jurymen are elected in each district in proportion of one to every 1000 inhabitants. Certain official classes the aged and sick are exempt, but all others elected are liable to jury duty during a term of six years.

In one respect the Swiss Federal Court differs widely from that of the United States. In the latter the constitutionality even of the laws of the highest legislature of the land can be brought in question and if such statutes do not agree with the Federal Charter they are declared invalid. But in Switzerland the Federal Court can only move within the limits set by the legislature. The Federal Assembly is declared to be the sole judge of the constitutionality of its measures.

While such a principle might be desirable in a country having no written constitution, it cannot be said that in this case, the Swiss are so secure in the constitutional rights as they would be under the control of an independent judicial body unswayed by the winds of politics. With all their facilities for revision of the constitution and for popular expression upon law, it would seem as if the matter of final interpretation should be left in calmer hands than those of a congress.

THE FEDERAL ARMY.

Space will be taken here to indicate only the general principles which govern the system of national defence which have been gradually adopted by the Swiss since coming into the federal relationship.

With them a standing army has never been a recognized institution. For a few years during the Helvetic Republic the country was obliged to maintain permanent troops for the benefit of France, but not willingly. Before that time the federal idea was too feeble to uphold such a measure, and afterward, when central government was established more firmly, the fear of tyranny prevented. Nor yet are the Cantons allowed, without special permission, to keep standing forces beyond three hundred men each, outside of the mounted police, and of this privilege they do not avail themselves.¹

On the other hand every citizen is liable to military duty,² and the Federal government makes the regulations under which he serves, establishes the system of instruction, drill, clothing, form of weapon, the formation of divisions and in time of war takes exclusive command. The Cantons assist somewhat in the administra-

¹ Fed. Const. Art. 13.

² Fed. Const. Art. 18.

tion, look after the available forces of their particular territories retain the power to appoint and promote the officers of their corps, attend to the clothing and arming of their contingents, but always according to the rules provided. The military exemption tax is collected by the States (see Federal Finance) but enacted in the first place by the central government. The latter maintains establishments for the manufacture of cartridges, small arms and cannon, and holds a monopoly of gunpowder, hence is in a position to assume at any moment of danger complete control over all the forces of war, both men and munitions.

The organization of the Federal Army is carried out with elaborate exactness. As stated above, every able bodied citizen, not otherwise engaged in specified government service, must be enrolled in the service, and continues in some form to the age of fifty a part of the national defense.

The forces are divided into three general sections according to the age of the men composing them. The active army, (Élite, Auszug) consists of all men liable to service between the ages of 20 and 32; the first reserve, national guard, (Landwehr) is composed of those between the ages of 33 and 44, while the Landsturm or second reserve, which would be called out only in case of dire necessity, consists of all the men between the ages of 17 and 50, not otherwise enrolled in the Auszug or Landwehr.

On coming of age every young man is entered on the list of recruits and if, after medical examination, he is found available, is sent to one of the schools of instruction for about six weeks of his first year. After that he is liable to be called out two weeks every other year (calvary ten days every year) during his term in the active army, to go into camp for military drill. On reaching thirty three the militia man is mustered into the Reserve where he is no longer subject to annual drill but for infantry a biennial, and for other troops an annual inspection.

Thus without maintaining a large standing army great care is taken in the instruction and exercise of the militia, a record being kept of every available man and where he may be found, so that when troops are wanted they may be instantly called together. The Landstrum has been recently placed on a higher footing so that when it is called out it may enter the army on the same plane as the other divisions. The citizens of Switzerland are, consequently, to the last man an army in ambush.

The effective force of the Federal Army on January 1, 1889, was as follows:

Active	125,570 men and officers
First Reserve	80,715
Second Reserve	262,766

Hence the Confederation could at immediate notice put over 200,000 men in the field, or, if necessary, 400,000 would rise to its defense. This is not large, as great armies go, but a substantial force for so small a territory. 1

- 1 The statute organizing the army dates 13 November, 1874, is published separately and in Amst. Samlg. N. F. 1.257. Changes made since then are in later volumes and in Wolfe's collection.

F E D E R A L F I N A N C E S.

The general government is maintained by regular sources of revenue which are enumerated in the constitution as follows:¹

Federal Property,
Duties on Imports,
Posts and Telegraphs,
The Powder Monopoly,
One half of the Military Exemption Tax,
Contributions of the Cantons.

The Federal Fortune consists of loaned funds, real estate, buildings, fortifications, powder mills and other property, some of which is productive, but a large part is probably a source of expense.

The estates yielded in 1888 something over 300,000 francs and the funds 805,767 francs. The returns from capital invested in industries and subventions of various state enterprises added about 201,000 francs to this sum, but from this a large amount must be deducted for expenses, which will be analyzed further on.

By far the greatest source of revenue is the tariff on imports. As soon as the new constitution came into good working

¹ Fed. Const. Art. 41.

² Almanach de Gotia 1890 p. 1035.

order steps were taken to tax articles of commerce entering from foreign countries on a single uniform plan, in place of the old state system. The principles upon which this taxation was based were financial and in no sense prohibitive or protective. A tariff for revenue only was the character of the law passed in 1849 and that principle has ever since prevailed. Changes have been made at various times in the rates, to correspond with new commercial treaties; or some other legislation, but the endeavor to come as near free trade as good financeering would allow has been faithfully adhered to. It has been the aim of the government to tax luxuries higher than the necessities of life and to lay as little burden as possible upon materials needed in the industries and agriculture of the country.¹

In 1850 the results of one year's working of the tariff showed a gross credit in the Federal treasury of 3,613,753 francs.² In ten years this amount was doubled and in 1866 had risen to 25,687,000.³

The system of assessment differs from that of England

1 Fed. Const. Art.29.

2 Volkswirtschaft Lexikon p.461.

3 Bericht des Schweiz. Bundesrathes, 1866, p.241.

in that instead of a few articles being selected to stand as much duty as they will bear, a large number, almost every commodity in fact, is taxed a little. The schedule of rates makes a list of over 100 articles ¹ which are subject to duty. Certain commodities, chiefly raw materials or waste products are admitted free, sometimes through reciprocity sometimes without.

A few export duties have also been in existence since the first, chiefly on timber, live stock, and certain raw materials. But the amount of receipts is very small and the percentage in comparison with the tax on imports constantly decreasing. In 1888 the whole amount was 109,513 francs. If we add to this various items arising from storage and weighing fees, fines, rents, and sundries, the total receipts from customs for 1888 amounted to 20,927,221 francs out of a general budget of 39,322,000 francs.

The next greatest source of income is the Department of Posts and Telegraphs, in which the carrying of the mails yields the most, the telegraph about one seventh of the whole and railroads an inconsiderable amount. The Post Office received in 1888, 11,591,332² francs, but expended over nineteen millions, so that the net result was 1,754,000. Perhaps we may say, as in the United

¹ Volkswirtschafts-Lexikon p.431-437. All laws on Tariff in Wolf. p.437, etc.

² Almanach de l'Empire, 1889.

States, that this department is not intended so much for a financial resource as a social institution.¹

The Federal government has also the power to lay a tax of fifty francs upon every kilometer of railway in active service whenever the net profits of management, after providing for a sinking fund, reach four per cent. Should the profits exceed four per cent the tax may be increased to a maximum of two hundred francs per kilometer. Hitherto this has amounted to very little.²

The Powder Monopoly yielded at one time considerably more than was expended upon it. While large quantities of powder were in demand for quarrying and for great engineering enterprises in connection with railways, the government was able to regard it as a thriving business, but when new and more powerful explosives³ came into favor this industry was obliged to fall back into the function for which it was originally intended, namely, a certain and secure source of ammunition in time of war. The highest returns were made in 1858 when the net gain was 230,211 francs. Since then the profit has been as low as 43,423 and in 1883 was

1 See chapter on The Confederation and Society.

2 Antienne Samig. XI,1. Art.19. Wolf. 1883.
A list of objects of taxation in Switzerland will be found in U. S. Consular Reports Nos.99-100. 1883.

3 Fed.Const.Art.41. Explosives not available as gunpowder are exempt from the monopoly.

returned at 145,905 francs. 1

The Military Tax is laid upon all citizens liable to military duty who do not perform personal service with the troops. As stated in another place, every able bodied man is under obligation for a certain period to go into camp with the militia and to be called out as occasion requires. Persons who wish to avoid this inconvenience may pay a tax based on both property and income.

It consists first of a personal tax of six francs, second, property tax of one and a half francs for each thousand francs of net fortune, third, as income tax of one and one half in one hundred francs net income.

Properties of less than 1,000 francs and the first 600 francs of income are exempt from this taxation. The burden laid on any one man shall not exceed 3,000 francs a year, and from the thirty second to the forty fourth year of age only one half the ordinary assessment need be paid. Yet in years when the greater part of the active army is specially called into extraordinary service the Federal Legislature has the right to raise the tax to twice the normal rate.

NOTE. In the levy of this tax, net fortune is made to include all real and movable property minus debts and encumbrances. Ag-

1 Volkswirtschafts-Lexikon, 632, etc.

real property is listed at three fourths of its selling price and household goods and tools are exempt. Net income is the receipts from the pursuit of any art, profession, business, industry, office or employment. The expenses incurred to obtain these earnings are deducted, also necessary household expenses and five per cent of the capital invested in a business. Annuities, pensions, and other similar revenues are included in the calculation of income.

Even Swiss citizens who are residing abroad are liable to the military tax. Lists are made out each year and notification sent from the Canton where the person is a resident. Parents are responsible for their minor sons and for those sons who, though of age, remain a part of their household.

The levy is made and the tax collected by the Canton governments, which retain one half of the gross receipts and turn over the balance to the Confederation. The share received by the Federal government in 1888, was 1,333,359 francs.

A L C O H O L M O N O P O L Y.

A matter which has perhaps as close a relation to the morals as to the finances of the Confederation is the manufacture and sale of spirituous liquors. In adjusting the complicated ques-

tion of revenue at the time of the adoption of the constitution in 1848, the taxation of liquors was left to the Cantons. They were allowed to lay duties at their entrance into the states and communities could lay additional taxes on the sale.

This arrangement was in reality a restriction of the guaranteed free trade within the confederation, but it was a compromise which seemed to furnish the only way out of the conflicting claims of central and local government. In the revision of 1874, however, in return for the assumption by the Confederation of a greater share of military affairs the Cantons agreed to drop all duties on liquors after the year 1890. But this date was anticipated, first by the constitutional amendment of 1885¹ which placed the power of making general laws on the subject in the hands of the Confederation, and second by the statute adopted by popular vote in 1887, which makes the manufacture of alcoholic liquors a Federal monopoly.

The principal features of the law are these: the right to import or to manufacture distilled liquors belongs exclusively to the Confederation;² but about one fourth of the product shall be manufactured on contract by private distilleries within the com-

¹ Fed. Const. Art.31. b. 3L bis.

² Distillation of certain native fruits and roots is exempted from this provision, and is free to any one.

tr., who are to be furnished by the Federal Government with the raw liquor. The purified products shall be sold by the Government for cash in quantities not less than 150 Litres at prices fixed by itself. Spirits used for technical and housekeeping purposes are to be sold at cost of manufacture. Such products are to be reduced (denaturized) by addition of spirits of wood or other mixtures which render them unfit for drinking.

The sale of liquor from house to house is forbidden, except that used for technical and household purposes. Wholesale dealing in quantities above 100 Litres is under no restrictions. Retail dealers require a license from the Cantonal authorities, and must pay a tax for the privilege according to the amount of sale. The Cantons are obliged to keep an oversight of the use to which the Federal spirits are put as well as those exempted from the monopoly. Otherwise the administration of the monopoly lies with the Confederation. The net income is to be divided among the Cantons according to population. They are obliged to spend at least ten per cent of this dividend in suppressing the evils of intemperance and to report annually to the Federal Government what they have done in that respect.

The transition from private to government manufacture was accomplished not by confiscation but by indemnification, a

special commission having been appointed to assess the minimum damage to existing distilleries arising from the introduction of the law.

It is too soon to determine the actual results of this law, either from the moral or the financial standpoint. Benefits expected from government control are greater purity of the liquors sold and, consequently, less evil effect from their use, second, greater strictness in the matter of licenses, both as to number and character of resorts; third, a regular and proportional source of income to all the states, and lastly a diminution of the evils of intemperance, both as a general result of the system and by the special use of the tenth part of the income for its suppression.

Since 1881 the Confederation has used its privilege of inspecting and controlling banks of issue. Federal laws regulate the amount of notes to be circulated, the reserve fund, the method of redemption and the publication of reports.¹ The government cannot assume the emission of notes as a monopoly nor guarantee the notes in circulation, but by uniform laws it assists in making business regular and safe. The Federal Council may even demand daily statements of accounts.

1 Volkswirtschafts-Lexikon, p. 557.

In return for this supervision a tax is levied on such banks at the rate of one franc for every thousand in circulation. This yielded in 1883 a gross return of 150,320 francs.

There are also many small items which go to make up the revenue of the various departments which need not be mentioned here. Fees for naturalization, registration of patents, of commercial houses and a multitude of other privileges contribute to the grand total.

The Confederation may also call upon the Cantons for contributions according to their ability to pay. A scale has been established by which the quota of each State is measured. Such a law was passed in reference to the old States-rights ideas which, like those which prevailed in American Confederation, could not endure the notion of a direct tax laid upon individuals by the central government. Various considerations governed the rate of this scale, as population, nature of the country, character of industries, and ability to pay. Having balanced all these with one another the Cantons were divided into classes with graduated rates, rising from ten to ninety centimes for each inhabitant. The lowest is the sparsely populated mountain district of Uri. Such large and prosperous states as Zürich, Bern, Aargau, Valais and Neuchâtel are returned at fifty centimes, while the highest rate is

placed on the thickly settled and thriving industrial city of Basel.

By the law of 1875 the rate was fixed for twenty years on the basis of the census of 1870, according to which the amount upon which the Confederation could rely is 1,172,234 francs, but this may better be considered a financial reserve, since the tax has never been called for.

To recapitulate briefly the financial operations of the central government, it may be observed that the total revenues from all sources reach nearly sixty millions of francs. To this amount the customs duties contribute very nearly half, followed at a long distance by the net profits of the Post Office Department and by the military exemption tax. This latter is the easiest of all the revenues to obtain since all expenses of levy and collection are assumed by the Cantons and the gross receipts equally divided. However, for the amount involved, the customs duties are very economically administered, the cost of collection amounting in 1888 to 7.4 per cent. The largest item of expense is the army, consuming in all nearly forty per cent of the revenues, and over sixteen millions of francs more than its own proper income. Although carrying on no wars of its own, nor joining in the conquests of other countries, Switzerland is compelled to undergo this great expense in order to preserve her neutrality and

the integrity of her borders.

In the Department of the Interior there was expended in 1888 for all matters coming within its sphere, public works, education, statistics and the like, about four and one half millions of francs, or something over seven per cent of all expenditures. Law-making, or the cost of maintaining the two houses of the Legislature, amounts to about forty two thousand dollars a year as compared with the three millions spent by the United States. Education, as noted in another place, being left largely to the Cantons, does not occupy a large portion of the Federal Budget.

The public debt of the country, although not a serious weight upon the prosperity of the state, is still a matter which occupies the attention of its financiers.

In 1849 the Federal debt was about 5,000,000 francs, and was reduced in a few years to little more than 1,200,000 but the public improvements which have been going on, especially since 1867, have brought the outstanding liabilities far away from those modest proportions. Led on by the rapid increase in the tariff revenues, the government has perhaps undertaken public works and military improvements faster than the means would warrant. On January 1, 1889, the total debt, including the coin reserve, amount-

ed to over four millions of francs. 2,000,000 of this was recently created for the indemnifications made necessary when the government assumed the alcohol monopoly.

The annual interest charge on the above debt was 1,773,184 francs.

Considering the thriving industrial condition of Switzerland the amount of these obligations is not very great. It stands very much in the shadow of the debts of larger states like Russia, or the United States, but even in view of the small size of the country, with but three millions of population, the burden amounts only to about fourteen francs per inhabitant and is carried at low rates of interest.

I N T E R N A T I O N A L R E L A T I O N S .

The geographical position of Switzerland has determined in more ways than one the history and politics of the nation. While yet a part of the Holy Roman Empire its mountain isolation gave its growth a peculiar tendency; when oppressed by grasping feudal lords, its natural roughness both raised the bulwarks of defence and bred the courage of the defenders; and in modern times the situation between four great empires, not only suggests an international policy for its legislators but guarantees the fulfillment of such an attitude.

That policy since the beginning of the sixteenth century has been neutrality. There was a time when Switzerland held the balance of power in Europe. Whoever had the soldiers of the Swiss on his side had half won the battle in advance. But after the unlucky outcome of the war in Italy at the battle of Marignano the Swiss determined not to mix in foreign affairs as a state policy, although they would allow soldiers to be hired. With exception of a brief and nearly fatal exception, during the period of the Helvetic Republic this rule has been adhered to. It found its final setting in the act of the Congress of Vienna, which bound the high contracting powers, not only individually to respect, but also to defend the Neutrality of Switzerland.

While it may be too much to claim that Switzerland has a peculiar moral mission to fulfill in the midst of the nations of Europe, it is nevertheless a fact that many of the problems of society are undergoing solution in that country in a way which illustrates the democratic, in contrast to the monarchic method of treatment. As an ally of one or more of the great powers its influence would not be great, its individuality would soon be swallowed up, but as an independent nation taking neither this side nor that, it serves as a barrier preventing too great friction between contentious nations.

The Swiss have done their part also in maintaining this neutrality by organizing a highly developed military system, and by elaborate measures for frontier defenses. To avoid complications the constitution declares¹ that "no military capitulations shall be entered into". Here long experience has pointed the way. The evils of French domination and the party distractions of centuries had their roots in the military agreements entered into by the various Cantons with foreign powers.

Neither the members of the Federal Government nor soldiers or officers of the army shall receive pensions, titles, orders, or presents from foreign power. This too was one of the

¹ Art. II.

sources of corruption which for a long time had ruined the national life.

National policy was guided by men who were in the pay of neighboring governments and as their wealth increased the independence of the country faded and vanished.

Happily the nation did not have to wait for a constitution to revive its self respect, but patriotism had already asserted itself and the prohibition here declared was but a preventive of an evil, now no longer feared.

The United States would seem to have had the fear rather than the experience of this evil when the framers of the constitutions enacted the similar prohibitions. Yet both were wise in removing temptation.

Switzerland has also recognized rights on the sea as a neutral nation, a fact which at first sight might seem superfluous to a nation without a sea coast or a ship. But the commercial interests of the country, sending wares to all parts of the world, are so great that in time of war they become a matter of great concern. Hence the treaty of Paris of 1856 in regard to neutral flags, neutral goods on vessels of belligerents, blockades, etc. was entered into by the Swiss in the same year.

Again by reason of its central position, Switzerland has become peculiarly the official headquarters of international

agreements. The government has accepted this mission and has been a moving spirit in such undertakings.

Hence arose the Convention at Geneva in 1864 for the improvement of the condition of the wounded in battle and out of this the world-wide Order of the Red Cross.

Hence also the Universal Postal Union, adopted in 1878, the central bureau of which is directed by the Swiss government. Many other international matters in which more or less of the surrounding powers are interested find expression in treaties which include Switzerland, as Telegraphs, Weights and Measures, the Gothard Tunnel, Phylloxera, Railroad Transportation, international copyright and many others.

Diplomatic relations are maintained with foreign countries by ministers plenipotentiary in France, Germany, Austria, Italy and the United States, while commercial affairs require the attention of consuls in all parts of the world.

It cannot be said that Switzerland has ever carried out a "brilliant" foreign policy. Acts of intervention and mediation in the affairs of nations have not been the vocation of so small a province, but the Swiss have stood manfully for their own rights as occasion demanded, and especially for the right to make their country an asylum for the oppressed of every nation. This has not been an easy task for vicious classes have taken advantage of this

freedom to make Switzerland a base of attack upon other countries, but the government has always endeavored to maintain the rights of man without countenancing schemes of anarchy. To do this without offending the powerful monarchies by which they are surrounded has required a large measure of courage, skill and diplomatic tact. ¹

¹ See Hilty, Neutralität der Schweiz in ihrer heutigen Auffassung.

THE CONFEDERATION AND SOCIETY.

It will be seen from the second article of the Constitution that the central government was not only provided with the ordinary powers of police to protect the country from danger without and to keep the peace within, but upon it was also laid the task of furthering the common welfare. To the Cantons were left those social relations purely connected with locality, yet there remained a large body of affairs now local, now general in their nature, which it was eminently desirable should be uniformly administered, or as in the case of public works should be undertaken by the whole people.

Hence one of the first matters to demand the attention of the framers of the Constitution of 1848 would naturally be the establishment of free trade among the Cantons. The endless vexations arising at the boundaries of every little state, the transportation privileges, the taxes on change of residence, which prevailed so long under the old regime were as much as possible put aside by the first constitution and still more by that of 1874. All import and export duties are now collected at the Federal frontiers and commercial freedom except in a few matters is guaranteed throughout the whole country.¹

¹ Fed. Const. Art. 30. Art. 31.

The exceptions to the free movement of goods are connected either with the financial or the sanitary operations of government. The monopoly of the sale of salt is retained by the states in some cases as a source of revenue in others as a public utility. The manufacture of gunpowder is a monopoly of the Confederation, maintained as a part of its military system. The manufacture of alcohol and spirituous liquors may also be wholly reserved to the Federal Government in an attempt to mitigate the evils of the traffic. Measures may be taken which limit the freedom of commerce when epidemic diseases threaten, as has been notably the case with cattle plagues and the phylloxera.

The Federal authorities may make regulations respecting the exercise of any class of industrial or commercial enterprise, but must not violate the principle of commercial freedom.¹ In exercise of this right laws have been passed which regulate the manufacture and sale of matches,² the guarantee of fineness in the manufacture of gold and silver wares,³ and the traffic in gold and silver products.⁴ All of these are intended to obtain uniformity and uniformity for all concerns.

1 Fed. Const. Art. 31 e.

2 Antliche Samlg. N. F. VI. 499, Wolf. 298.

3 Antliche Samlg. N. F. X. 45, Wolf. 305.

4 Antliche Samlg. N. F. IX. 266, Wolf. 317.

Factory laws for the control and regulation of the sanitary condition of workshops, for the employment of children, and for the establishment of responsibility for accidents to employees have been in force since 1877.¹ On the subject of insurance for the whole country is thus secured.

Also within the sphere of Federal legislation and supervision are agencies for foreign immigration and private insurance companies. Where insurance is undertaken by Cantonal governments (see Canton Fribourg) the Confederation has no right to interfere.

Patents for inventions, Copyrights for Books and Works of Art, and Trade Marks for articles of commerce are issued also by the central government.

The efforts to establish uniform commercial laws for the whole of Switzerland have been much hindered by sectional opposition, but have finally been able to attain a reasonably satisfactory condition. The Federal Law of Contracts (Obligationen-Gesetz) passed in 1881,² is an exhaustive treatise of over 200 pages which defines all classes of contracts and liabilities as they shall be observed throughout the Confederation.

¹ Fed. Const. Art. 34. Artliche Samlg. N.F. III, 241, Wolt. 25.

² Artliche Samlg. N.F. V. 335, Wolt. 173.

inally in April 1879, a general Bankrupt Law was passed which regulates the collection of debts also according to a uniform system.

One industry has been entirely forbidden. Gambling houses are the subject of constitutional enactment and their establishment prohibited. The large gaming tables which formerly flourished so abundantly at summer resorts were given to the first of January 1878, to close their doors, and have since been under the ban of law.² Lotteries may also be made the subject of Federal legislation and have received attention in the Law of Obligations so far as to establish that no liability can grow out of lottery dealings unless the lottery has been permitted by competent authority.³

The management of Posts and Telegraphs, including also Parcel Post is under the exclusive control of the Confederation.⁴

Here was made one of the greatest steps in advance of the old system. Formerly each state had managed the postal arrangements in its own territory, and such measure unity as existed

1 Comments by A. Zeerleder Das Bundesgesetz über Schuldverhältnisse und Konkurs. Bern. 1859. En. Dorel. Same title Neuchâtel. 1859.

2 Fed. Const. Art. 35.

3 Oblig. R. 514, 515.

4 Except that railways have the right to maintain lines along their roads for their own service.

as obtained only by loose agreements between adjacent Cantons. Then each state was more mindful of the financial, than of the social aspects of the question, and a comprehensive and regular system was impossible. As compared with surrounding nations Switzerland presented a pitiable aspect of disjointedness. Efforts had been made as early as the projected constitutional revision of 1832 to place the postal service under Federal Control but these did not succeed until 1848.

The states thus obliged to give up their rights were satisfied with indemnities which were to amount to nearly one and a half millions of francs a year.¹ In addition to this, another connection with the Middle Ages was severed by the purchase of the transportation rights of the General Counts of Aargau and Taxis which were still in force in Schaffhausen. The indemnities however, were settled at the revision in 1874, according to which, exclusive control and benefit of income were given to the Confederation in return for certain changes in the military taxes.²

The Postal Service undertakes the transmission of letters, printed matter, parcels, money orders, and over certain stage routes transports passengers. The administration is very care-

1 Blumer I, 503.

2 Protocol. Bundesrevision p. 201.

fully conducted, and rapid and safe communication with all parts of the country is obtained.¹ The financial aspects of this department are considered in another place.²

The monopoly of Telegraphs was established first by a Federal law in 1851. At the time of the adoption of the Constitution of 1848, this means of communication was not sufficiently developed to gain recognition. It took its place naturally, in the revision of 1874.

The Confederation has the right to erect lines either above or below ground through any State, but always after consultation with the Cantonal or community authorities through whose territories it is proposed to pass.³ The operators and clerks are Federal appointees, as in the Postal Department, and subject to all the laws governing such servants of the State.

NOTE: A uniform tariff is established for telegrams between all parts of Switzerland. For the sending of a message between any two stations and its delivery within a radius of one kilometer from the receiving station the charge is as follows: (1) A fixed payment of 30 centimes, (send tax); (2) For each word, in-

1 Postal Laws are found in special hand books issued by the department and in Wolf. p.501 etc.

2 See Federal Finance.

3 Amtliche Smlg. VII.329 Wolf. 564, 565.

charging the address 21/2 centimes. So that the charge for a telegram of ten words with eight words in the address would amount to 75 centimes or 15 cents.

The laws regulating railways proceed only from the Confederation.¹ The government has never undertaken to manage railroads on its own account, though by the terms of certain concessions some short lines are at its disposal. The question as whether the Confederation shall buy out all the existing roads is frequently brought forward but as yet not settled. It has, however established very carefully drawn laws as to the construction and conduct of such enterprises and maintains a close supervision over their administration.

Regulations for the technique of railroad building extend to the width of track, strength of axles, height of buffers, and even to the lettering of cars, so that uniformity and safety are provided for as much as possible.

But one of the most useful spheres of governmental action lies in the regulation of the financial management of these undertakings. Federal law prescribes the method of keeping accounts which railways must follow, what shall be considered expense and and how classified, what shall be credited to profit and loss,

1 Fed. Const. Art.26.

have shall be considered capital, and shall be charged to improvements and new service, and further on the means by which stock shall be transferred, indebtedness incurred and liquidation carried out. The companies must balance their accounts at the close of every calendar year and before the 30th of the following April must lay printed copies of their reports before the Federal Council. Here it undergoes inspection by the Department of Posts and Railroads and control is thus maintained over the management in the same way that National Banks are controlled in the United States.

The usefulness of these regulations is obvious. They give protection not only to the state against operations prejudicial to its welfare, but the interests of the stockholders and bondholders are served in a high degree by this publicity of accounts. While gambling in railroad stocks cannot thus be done away with, yet manipulation of funds, the "hypothecation" of bonds, and much contract jugglery can be headed off.

The statistics of the subject, which the United States government is endeavoring so hard to obtain by persuasion and only partially succeeding, are in Switzerland brought to hand every year by Federal statute, to the good of all concerned.

Without actually managing the railways itself the govern-

ment has really brought about a high degree of centralization.

Since 1848 the coinage of money has been the exclusive prerogative of the Confederation. The confusion of currency which was endured in the American colonies and Confederation is not to be compared to the distracting disorder which prevailed in the monetary arrangements of Switzerland. There were as many coinages as States and almost as many different systems and bases of value. From so many sources it was impossible to regulate the issue according to the necessities of trade, even if this could endure the endless calculations of exchange. Efforts were made to reform this, but fell with the projected constitutions of the thirties. Under the new Confederation the matter was simply turned over to the Federal authorities and they, after careful consideration, adopted for uniform currency throughout Switzerland the coinage system of France.

The unit of this is the Franc, divided into 100 centimes (German, Rappen) and coined in various multiples which correspond in size and weight to the French money.

By the treaty of 1855 Switzerland entered the Latin Monetary Union, so that now her coinage is on a uniform basis not only with that of France but also of Belgium, Italy, and Greece.¹

¹ International Mon. Conf. 1878. Appendix, p. 779, etc.

"The establishment of weights and measures belongs to the Confederation. The administration of the laws on the subject is carried out by the Cantons under the supervision of the Confederation".¹ This order of things was brought about finally in 1874. The Cantons had already before the establishment of the Confederation endeavored to help themselves toward uniformity by means of a Concordat, and were ready for the provision of the constitution of 1848 which granted the Federal government the right to establish a general system on the basis of the existing agreement. But resistance was encountered in the Romance Cantons which was not wholly laid still the matter was put into the hands of the central government without reserve. Then the metric system was adopted and finally made obligatory.

As a matter of general interest to the whole people the Confederation superintends the maintenance of such highways and bridges as contribute to the welfare of the Union. The care of roads is in reality the duty of the individual Cantons, but by keeping an oversight upon thoroughfares of communication a greater certainty of good highways is obtained. Works of a larger nature are also supported in part by Federal subventions. Four of the mountain Cantons receive annual subsidies for maintaining the

¹ Fed. Const. Art.40.

Alpine passes within their territories,¹ and such undertakings as the Gotthard tunnel have been heavily supported. The Confederation is able to discipline these subsidized Cantons in case they do not properly maintain their roads, by withholding the sums allowed them.²

In general it may be said that the Confederation is expected to assist in the construction of public works which exceed the powers of single states. The improvements of rivers, protection against avalanches, and other matters of like nature have had the support of the Federal Legislature. In order to carry out such projects, the Confederation may exercise for itself the right of Eminent Domain, and in case an undertaking on the part of a Canton threatens injury to the military interests of the country, may forbid its construction.³

This superintendence over the general welfare of the Confederation extends also to the Forestry of the Alps, where great precautions must be taken against torrents and snow. Fishing and hunting and the protection of useful birds may also be made the subject of general laws, although the exercise of fishing and

1 Fed. Const. Art. 31 Uri. Fr. 20,000
Graubünden 200,000
Tessin 200,000
Wallis 50,000

2 Fed. Const. Art. 37.

3 Fed. Const. Art. 23.

hunting privileges is regulated by Cantons or communities, as stated elsewhere. (See Canton Finance)

In the matter of Education, the part played by the central government does not exhibit to advantage what has been done by the Swiss people. Schools and Universities are nearly all maintained by the Cantons, and the work done by them is treated more fully under the head of Cantonal Government, yet the Confederation contributes a respectable amount to the advancement of learning and supplements in many ways the efforts of the states.

The constitution of 1848 authorized the Federal government to erect and maintain a Polytechnic School and a University.¹ The first was founded in 1855, but the University has never been realized. The revision of 1874 went further in its provisions for education, by declaring that in addition to the existing Polytechnicum, the Confederation was authorized to establish a university and other institutions of higher education or, to aid such institutions.² Furthermore the obligation was laid upon the Cantons to maintain primary education, which throughout the whole country must be compulsory, free of cost, open to children of all religious beliefs and under the supervision of the state. If any Canton does not fulfill these obligations the Federal Government

1 Art. 22.

2 Fed. Const. Art. 27.

na, take the necessary steps to compel it.

The interpretation and application of the clauses respecting primary education have been delicate tasks for the Federal authorities and perhaps await yet more satisfactory solution. Many of the Cantons need no urging in the direction either of popular or higher education, supporting liberally universities, gymnasiums, seminaries, and carefully conducted public school systems. Besides the Federal Polytechnicum there are four universities with over three hundred instructors, within this small territory of about three millions of inhabitants.

The Confederation itself expended in 1887 upon the Polytechnicum 375,000 francs.¹ It contributed further to the support of over one hundred technical and industrial schools and museums to the amount of 220,000 francs, and for agricultural education 1,650 francs; it also takes an interest in the preservation of national historical relics² and advances the interests of Swiss fine arts with an annual credit of 100,000 francs.³

The activity of the central government in the education of army recruits should be mentioned here. Military instruction is entirely in the hands of the Confederation and includes much

¹ Grob. Jahrbuch des Unterrichtswesen in der Schweiz. 1887.

² Law of June 30, 1884.

³ Law of December, 1887. Grob. Unterrichtswesen. Anhang. p. 1.

beside the technicalities of drill.¹ By its examinations the state of primary education in the various Cantons is exhibited and by the publication of the statistics an honorable rivalry in this field is encouraged. The States have not suffered much interference with their educational systems but the general supervision has exerted a favorable influence toward uniformity and excellence.

THE STATE AND RELIGION.

The relations of the central government to religion and worship are of a general rather than of a particular nature. To the Cantons have been left the management of church societies and the local machinery of religious expression; to the Confederation the great principles upon which all are founded. Against violation of these the citizen may appeal to the Federal Constitution and may invoke the powers of the Federal government in his behalf.

In brief, these general principles are as follows:² Freedom of conscience and of belief are inviolable. Persecution either on the part of the state or of other religious sectarians can not be suffered. Neither may any one be compelled to join any

1 See "Military System" above.

2 Fed. Const. Art. 49-53.

religious society, or to participate in any religious instruction or worship without his own consent. This principle is also involved in the provision mentioned above, whereby the public schools shall everywhere be so conducted that members of all confessions may attend without injury to their religious feelings or violation of conscience.

In order to settle any controversies which might arise between parents of different confessions, the constitution provides that the religious education of children up to the end of the sixteenth year shall be determined by the father or the possessor of the paternal authority.¹

The exercise of civil or political rights can not be abridged by regulations or conditions of an ecclesiastical or religious nature. In other words, a man may not be deprived of any of his civil rights because he does, or does not belong to this or that denomination. Switzerland was slow in coming to this point. Even by the constitution of 1848 only the Christian religion was recognized. Israelites and others had no guarantee whatever except what public opinion could furnish. In 1874 all distinctions were laid aside.

¹ "Inhaber der väterlichen oder vormaligen Gewalt".

But if religious opinion can not deprive a citizen of his rights, neither can the State be deprived of his services on account of his private opinions. Sectarians who refuse to carry arms may be compelled to do so. (Yet when such cases come up among recruits, officers have been known to compromise with conscientious non-combatants by placing them in the hospital or other similar service.)¹

No one shall be required to pay taxes which are levied especially for the purely religious purposes of any society to which he does not belong. The presence of an established religion in many of the Cantons makes the interpretation of this clause and, especially, the formulation of a Federal statute on the subject quite difficult.

The Federal Council and the Supreme Court have, however, spoken to the effect that no one can refuse to pay the general Cantonal or general community taxes, out of which in so many states the church is supported.² The tax must be for the exclusive uses of a particular cult. Levies for matters which serve both religious and civil purposes, as bells, tower clocks, or grounds for cemeteries would not be considered special religious

1 Langhard. Glaubens- und Kultusfreiheit. p.121.

2 Langhard, p.73.

taxation.

The freedom to exercise religious worship, within the bounds of good morals and public order, is guaranteed. Any attempts on the part of different sects to interfere with each other, or of ecclesiastical authorities to usurp the functions of the civil government, would be checked by the Cantons as well as by the Confederation. Appeal in any such cases might be had to the Federal authorities, with whom lies the guarantee of equality.

The establishment of Bishoprics within Swiss territory must be done only with the consent of the Confederation. This is aimed at the prevention of divided allegiance which would arise where a bishopric included territory of foreign governments. Considerable trouble has been experienced with the Roman Catholic Church on this account. In early times their dioceses paid no attention to national boundaries and when it became necessary to re-organize these divisions no little dispute arose, and has not yet been fully settled.

The Order of the Jesuits and societies associated with it are forbidden to locate anywhere in the country and their activity in church or schools entirely prohibited. The establishment of new monasteries or the re-opening of any suppressed cloister is also forbidden. The downfall of the Jesuits in Switzerland was

caused by their incessant interference in affairs of state and the intense ultra-montane character of their policy. Their agitation, particularly, brought about the conflict of religions which resulted in the secession of the Sonderbund and very nearly the downfall of the Republic. Such activity was sought to be totally excluded for the future, since without the agitators the people would soon learn to accommodate themselves to each others religious views.

Finally, in some minor points in which ecclesiastics might exert undue influence, the civil authority was given by the constitution a power which in former times it did not have. The Civil Register of Births, Deaths, Marriages, and Civil Status was placed entirely in the hands of public officials, and to prevent misunderstandings between the church and the unfaithful, it is laid upon the civil authorities to see that every deceased person shall be decently buried.¹

¹ Fed. Const. Art. 53.

THE CONFEDERATION AND THE INDIVIDUAL.

Having indicated in some degree the organic structure of the Federal government, its place in the complex life of the Confederation and its relations to the social fabric, it will be in order to point out briefly the individual rights which are especially under its protection.

In making up the sum of personal privileges which are enabled to be enjoyed, it will also be necessary to keep in mind all the social conditions which form the citizen's environment, and to remember that all the governmental activities mentioned in the previous chapters, which are exerted for the general welfare, are inseparable from the good of the private individual. To these may be added any particular elements which the Confederation contributes directly to the safety and well being of its members.

In respect to outward designation of these things the Swiss government does not differ much from many other enlightened states, yet the quality of the privileges may be greater.

In the first place, there is guaranteed to every citizen equality before the law.¹ Not that every man is equal to

¹ Fed. Const. Art. 1.

every other man in his rights to possessions and preferment, but, when he appeals to the law or expresses his opinion in political matters, the lowest is as good as the highest. "There shall be in Switzerland no condition or political dependence, no privileges of place, birth, family, or person".

Freedom of movement from one state to another may not be denied to any one who can show evidence of origin, nor shall the citizen who takes up a new residence be treated any differently than his neighbors. Persons coming from one state into another cannot be taxed more severely than old residents, nor for the support of both Cantons. Foreigners look to the Federal government for naturalization, though full adoption as citizens depends on the community and Canton. ¹

When citizenship is once obtained no state can banish the possessor out of its borders nor deprive him of its privileges. The Confederation retains the right to order unpleasant strangers to leave the country, but Swiss citizenship cannot be outlawed by any limits of time or absence from the country, except at the request of the person interested, and the regulations for the dissolution of allegiance are established by the central power. Foreign countries are not so willing to allow the perpe-

¹ Fed. Const. Art. 46-48.

ality of these obligations,¹ but, so far as the home government is concerned, a Swiss citizen once is to be a Swiss citizen always. The liberty of religious belief, freedom of conscience and choice of worship, have been sufficiently stated under the subject of Church and State. It must be conceded that so long as the Cantons maintain established religions, or even attempt to support the ministry of all the chief sects alike, there will be limitations to religious liberty not known in the United States. But to have cut loose all at once from the old state of things would have been too violent a change in 1848, or even in 1874. So far as private belief is concerned, no limitations are set, but as to taxation for religious purposes, complete freedom is yet to be obtained.

By removing the registration of births and marriages from the hands of any but the civil authorities a possible limitation of religious liberty was taken away, since ecclesiastical powers might forbid the marriage of persons of different beliefs. This was a source of great controversy, often hardship in earlier times, but now the "right of marriage stands under the protection of the Confederation and cannot be limited by any restrictions of an ecclesiastical or economic nature, nor on account

¹ For instance, the U. S. Wharton's Int. Law Digest, 172.

of previous conduct or any other police reasons".¹ The parties may judge for themselves whether or not they will enter into this relation, and no artificial barriers can be thrown up by states or communities either by non-recognition of foreign ceremonials, or by special taxation, bridal settlement fees, or similar demands.

To expression of opinion through the press the fullest liberty is guaranteed within the bounds of good morals.² Punishment for the criminal abuse of this privilege is exacted by the Cantonal Governments, though the laws under which this is done must be approved by the Federal Executive. Furthermore, the Confederation has the right to punish press abuses which are directed against itself, or the Federal officials.³ This might be made an instrument of oppression, but the criminal statute enumerates chiefly as indictable offenses the incitement to insurrection, or to disobey or hinder the execution of Federal laws, and when officials are libelled, suit against the offender is brought not by the government, but by the official or body injured.

The right of citizens to form associations cannot be impeached so long as their objects are not unlawful or dangerous

¹ Fed. Const. Art. 54.

² Fed. Const. Art. 55.

³ Bundesstrafrecht. Art. 69-71, 42, 43, 46, 48.

to the state. The laws on the subject of the right of civil liberty are, however, established by the Cantons themselves.¹ Likewise the right to enter complaint of grievances in form of petition to government stands under the protection and guarantee of the Confederation.

If summoned to answer for his action in a court of law, no citizen can be made to appear before any other than the legally constituted tribunal of his place of residence. Hardship cannot be thus imposed upon a man by bringing suit in a distant and untimely place, but only before the proper judges of his community or state.² This was one of the great principles for which the struggling Confederation fought in feudal times and first obtained in the fourteenth century.³ The whole power of the central government may now be invoked to maintain the "jus non evocando". Nor may extraordinary tribunals be erected for special purposes, nor shall ecclesiastical courts have any jurisdiction in civil matters. Imprisonment for debt, and all corporal punishments are forbidden.⁴ Sentence of death may not be pronounced for politi-

¹ Fed. Const. Art.56.

² Fed. Const. Art. 56.

³ Introduction p.5.

⁴ Fed. Const. Art.59, 60.

cal offenses. This was the original provision of the Constitution of 1848, but in the revision of 1874 this article was made to abolish all capital punishment, except in time of war. A few years trial of this, however, provoked great outcry from all sides and in 1879 the Legislature was compelled to submit the matter to popular vote. As a result the punishment of death for crime was given back again to the option of the Cantons, and only the guarantee of political inviolability retained by the Confederation.

The liberties and privileges in the domain of Commerce and Industry have been mentioned before, and it might then have been observed that, while freedom of contract and free trade between states and, in general, unrestricted personal action were largely maintained, in reality, the social operations of the Confederation and the Cantons through their monopolies and industries, imposed quite powerful limitations on the sphere of individual activity. These are not necessarily harmful to public welfare but are nevertheless to be noted when speaking of personal liberty.

Finally, as a crown to the whole edifice of popular rights, the Confederation guarantees to all citizens, not only the liberties and privileges contained in the Federal constitution, but also those included in the laws of the Cantons.¹ In becoming

¹ Fed. Const. Art. 5.

surety to each state for the preservation of its constitution, the Federal government does not intend to thereby guarantee the continuance of any existing administration; it upholds only the powers which the people have granted to the authorities and, if constitutional liberties have been infringed, will defend the rights of the citizen. In the Federal Supreme Court is found a tribunal where the individual may seek redress and in the Federal executive the strong arm of enforcement.

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V I T A.

John Martin Vincent was born October 11, 1857 at Eljria, Ohio; received his early education in the public schools of that place, graduating from the High School before the age of sixteen; went soon after to Oberlin College, continuing there, excepting frequent intervals of ill health, to the close of the Sophomore year; joined the Junior Class of Amherst College in the autumn of 1879, but was prevented by a prostrating illness from finishing the year; in November 1880, sailed for Europe and spent seven months in travel in England, France, Italy, and Germany; spent the winter semester of 1881-2 at the University of Leipzig, the following summer term at Berlin and the succeeding winter again at Leipzig, pursuing at all of these places studies in Law and History; returned after an absence of two and a half years and engaged in literary work, private instruction, and study; received from Oberlin College in 1883 the degree of A. B. and in 1886 that of A. M.; appeared first at the Johns Hopkins University in 1885, attracted by the Elmschli collection of documents on Switzerland; was attached as a student during parts of the years 1885-6 and 1886-7; was invited to take charge of the Library of the Depart-

ment of History and Politics in 1877, and has acted as Librarian since the autumn of that year; in 1879 was given the additional appointment of Reader in Historical Bibliography, and has pursued, in connection with these duties, further studies in History, Political Economy, and International Law.

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